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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No 103.

THE BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER MINING COMPANY, APPELLANT,

*vs.*

THE MONTANA ORE PURCHASING COMPANY, F. AUGUSTUS HEINZE, AND ARTHUR P. HEINZE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

FILED MAY 21, 1901.

(18,175.)

(18,175.)

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*vs.*

THE MONTANA ORE PURCHASING COMPANY, F. AUGUSTUS HEINZE, AND ARTHUR P. HEINZE.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 19, 1901.

1 Pleas before the Honorable Hiram Knowles, judge of the district court of the United States for the district of Montana, sitting in the circuit court of the United States for the district of Montana, within the ninth judicial circuit, at the February term, 1901, thereof.

Be it remembered that on the 28th day of March, 1898 an "amended bill of complaint" was filed in the clerk's office of said circuit court; which said amended bill of complaint is in words and figures following to wit:

In the Circuit Court of the United States, Ninth Circuit, for the District of Montana, Southern Division. In Equity.

Boston and Montana Consolidated Copper & Silver Mining Company, a Corporation, Complainant,
*vs.*
Montana Ore Purchasing Company (a Corporation), F. Augustus Heinze, and Arthur P. Heinze, Defendants.

*Amended Bill of Complaint.*

To the honorable judges of the circuit court of the United States, ninth circuit, district of Montana:

The Boston and Montana Consolidated Copper and Silver Mining Company, a corporation organized and existing under the laws of the State of Montana, and a citizen of the State of Montana, leave of court being first had and obtained, files this its amended bill against the Montana Ore Purchasing Company, a corporation
2 organized under the laws of the State of Montana, and a citizen of the State of Montana, F. Augustus Heinze, of New York city, State of New York, and a citizen of the State of New York, and Arthur P. Heinze, of Brooklyn, in the State of New York, and a citizen of the State of New York. And thereupon your orator complains and says.

That your orator is now and at all the times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State — Montana, with its principal place of business at Butte city, in Silver Bow county, in the State of Montana.

That the defendant, Montana Ore Purchasing Company, is now and at the time hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Butte city, in Silver Bow county, in the State of Montana.

That your orator is the owner and entitled to the possession of that portion of the following-described property, known as and called the Pennsylvania Lode mining claim, lot number 172, situated in Summit Valley mining district, Silver Bow county, Montana, which is particularly bounded and described as follows, to wit:

Beginning at corner number one, from which the quarter section corner on north boundary of section eighteen in township
3 three, north of range seven west of the principal meridian for Montana bears north three degrees fifty-seven minutes west seven hundred and thirteen feet distant, and corner number three of lot number 64, St. Lawrence Lode claim, and corner number two of lot number 126, the Little Ida Lode claim, bears north eighty-three degrees ten minutes east four hundred and forty-nine feet distant; thence, first course, magnetic variation 19 degrees 45 minutes east south 88 degrees 15 minutes east 56 feet to a point on east end line of lot 147, the Rob Roy Lode claim; for point of intersection of said lots 147 and 172, from which corner number 5 of said lot 147 bears south 11 degrees east two hundred and ninety-six feet distant; one thousand five hundred feet to corner number two; thence, second course, magnetic variation 20 degrees east, south 4 degrees 30 minutes west 564.6 feet to a point on north boundary line of mineral application 722, a placer claim, from which the northwest corner of said mineral application 722, which is also the northeast corner of mineral application 686, a placer claim, bears west 183.9 feet distant; six hundred feet to corner number three; thence, third course, magnetic variation 20 degrees east, north 88 degrees 15 minutes west 181.3 feet to a point on the west boundary line of said mineral application 722, and east boundary line of said mineral application 686, from which the northwest corner of said mineral application 722 and the northeast corner of said mineral application 686 bears north 29.8 feet distant nine hundred and twenty-four feet to a point over a tunnel, from which the mouth
4 of said tunnel bears south 58 feet distant; eleven hundred and fifty-six and two-tenths feet to a point on the north boundary line of said mineral application 686, from which the northeast corner of said mineral application 686 bears east 974.4 feet distant; fifteen hundred feet to corner number four, from which the southwest location corner bears south four degrees 30 minutes west 48 feet distant; discovery shaft bears north 70 degrees 30 minutes east 827 feet distant; corner number five of said lot 147 bears north 27 degrees 30 minutes east 344 feet distant and corner number three of lot 146, the Grant Extension lode, bears south 36 degrees 45 minutes west 152 feet distant; thence, fourth course, magnetic variation 20 degrees east north 4 degrees 30 minutes east 325 feet to a point on south side line of said lot 147, for point of intersection of said lots 147 and 172, from which corner number five of said lot 147 bears south 82 degrees 4 minutes east 135 feet distant; six hundred feet to corner number one, the place of beginning. Expressly excepting and excluding herefrom all that portion of the ground here*to*before described, embraced in said mining claim or lot number 147; also mineral applications number 686 and 722; and also all that portion of said Pennsylvania lode; also all veins, lodes or ledges throughout their entire depth, the tops or apexes of which lie inside of such excluded ground. Also excepting and excluding herefrom all that portion of the said above-described Pennsylvania Lode claim described as follows, to wit: Beginning at

the northeast corner of lot number 172; and running thence
5 north 88 degrees 15 minutes west 130 feet; thence south 69 degrees 25 minutes east 136 feet; thence north 4 degrees 30 minutes east 44 feet to the place of beginning, and containing an area of $\frac{7}{100}$ of an acre of ground.

That this plaintiff became and was and is the owner of the said premises, in the following manner, to wit:

That on the 18th day of June, 1877, William Harris, Sr., and William Harris, Jr., duly located the said Pennsylvania Lode claim as a quartz lode mining claim.

That on the 13th day of January, 1879, the said William Harris, Sr., and William Harris, Jr., duly conveyed to John E. Lloyd, David J. Lloyd, and Thomas E. Lloyd, by regular deed of conveyance, a one-half undivided interest in and to the said Pennsylvania Lode claim.

That on the 13th day of January, 1879, William Harris, Sr., and William Harris, Jr., duly conveyed to John H. Davis, by regular deed of conveyance, an undivided one-sixth interest in and to the said Pennsylvania Lode claim.

That on the 19th day of May, 1879, the said John H. Davis duly conveyed to William Harris, Sr., by regular deed of conveyance, a one-twelfth undivided interest in and to the said Pennsylvania Lode claim.

That on May 19th, 1879, the said John H. Davis duly conveyed to John Dunstan, by regular deed of conveyance, a one-twelfth undivided interest in and to the said Pennsylvania Lode claim.

6 That on March 13, 1880, David J. Lloyd conveyed to Wm. W. Thomas, by regular deed of conveyance, an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 14th day of August, 1880, William Harris, Sr., and William Harris, Jr., conveyed to Thomas Griffith, by regular deed of conveyance, an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on July 6, 1882, Thomas C. Porter and Howell M. Thomas, the duly appointed, qualified and acting administrators of the estate of William W. Thomas, deceased, duly authorized and empowered, conveyed by regular deed of conveyance to John E. Lloyd an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 19th day of July, 1882, the said John E. Lloyd, by regular deed of conveyance, conveyed to Jeremiah Griffith an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 15th day of August, 1883, the said William E. Harris, Jr., and Anna Harris, his wife, by regular conveyance, conveyed to Thomas Griffith an undivided one-eighth interest in and to the said Pennsylvania Lode claim.

7 That on the 9th day of April, 1886, a United States patent for the said Pennsylvania Lode claim, was duly issued by the United States to William Harris, Sr., William Harris, Jr., John

E. Lloyd, David J. Lloyd, Thomas E. Lloyd, Jeremiah Griffith, Thomas Griffith, and John Dunstan.

That on the 28th day of March, 1888, the said Jeremiah Griffith, by regular deed of conveyance, conveyed to Enoch Grim an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 31st day of March, 1888, the said John E. Lloyd, Margaret Lloyd, his wife, Jeremiah Griffith, Enoch Grim, John H. Davis and Laura Davis, his wife, Thomas E. Lloyd, John Dunstan and Sarah Dunstan, his wife, William Harris, Sr., and Barbare Harris, his wife, William Harris, Jr., and Anna Harris, his wife, Thomas Griffith, and David J. Lloyd, by John E. Lloyd, his attorney-in-fact, by regular deed of conveyance, conveyed to Thomas Couch all that portion of the said Pennsylvania Lode claim, hereinbefore described as the property of this complainant, excepting a right of way to the Montana railway.

That on the 30th day of November, 1888, by regular deed of conveyance, the said Thomas Couch and Rachel Couch, his wife, conveyed to this complainant, the Boston and Montana Consolidated Copper and Silver Mining Company all that portion of the
8 said Pennsylvania Lode claim, hereinbefore described as the property of this complainant, and that thereby, and by virtue of the said conveyances, this complainant became and was and is the owner of the said premises hereinbefore described.

That on or about the 1st day of April, 1895, the said defendants wrongfully and unlawfully entered upon and into the said premises, hereinbefore described, by underground workings, and by tunnels, shafts, cross-cuts, and levels, and extracted from the said premises large quantities of valuable ores, to wit, one hundred and fifty thousand tons, more or less, and of the reasonable value of five hundred thousand dollars.

And that ever since the said date the said defendants have continued to extract and mine ores from the said premises belonging to this complainant, and are now mining and extracting ores therefrom, and threaten to continue to do so unless this court shall by its injunction restrain and enjoin the said defendants from so doing.

That the said ground of this complainant is valuable almost exclusively for the mineral therein contained, and that the same is very valuable for the copper and silver and gold ores which are found therein in large quantities, and that it is these ores that the defendants have extracted, and which they are now extracting and mining and threaten to continue to extract in the future.

9 That said ground owned by complainant, hereinbefore described, is of the reasonable value of more than one hundred thousand dollars, and that the said ores which the defendants are extracting, and threaten to extract are of a value in excess of fifty thousand dollars.

The complainant further alleges that it has no means of ascertaining the quantity or value of the ores which the said defendants are extracting or may extract from the said premises owned by this

complainant, and that if the defendants are permitted and allowed to continue to extract the said ores from the said premises that it would be altogether uncertain and indefinite as to what amount of ores, or the value thereof, which may be extracted in the future as in the past, and that this complainant will be compelled to rely to a great extent upon the good faith and showing of the defendants as to the amount and value of the ores which they have heretofore and may hereafter extract from the said premises.

That unless the defendants are enjoined and restrained from mining and extracting the ores from the said premises of this complainant, the said portion of the said Pennsylvania Lode claim, this complainant will be required to bring numerous actions for the determination of the damages which it has sustained and will sustain by reason of such trespasses, and that the said trespasses on the part of the said defendants are continuing from time to time, and
10 that this complainant brings this action in order to avoid a multiplicity of actions in the premises.

That by reason of the said trespasses on the part of the said defendants on the premises of this complainant, this complainant has suffered and will continue to suffer great and irreparable injury and damage.

That on or about the 6th day of March, 1897, this complainant brought an action in the circuit court of the United States, ninth circuit, for the district of Montana, southern division, against the said defendants, to recover of the said defendants for the ores extracted from the said portion of the Pennsylvania Lode claim, hereinbefore described, and that the said action is now pending in this court.

And, as showing the jurisdiction of this court to determine the said mattters set forth in the said action, this complainant alleges:

That the determination of the said controversy between the said complainant and the said defendants involves the construction of title twenty-three, chapter VI, of the Revised Statutes of the United States, concerning mines and mineral lands, in this, to wit:

That the said Pennsylvania Lode claim, owned and claimed by this complainant, as hereinbefore alleged, is a mining claim duly located under the provisions of the statutes of the United
11 States relative to the appropriation of mineral lands, and that the same has been patented as a mining claim under the provisions of the said statutes.

That the said defendants own or claim to own a portion of that certain quartz lode claim, known as and called the Rarus Lode claim, lott number 179; and also a portion of that certain other quartz lode mining claim, known as and called the Johnstown Lode claim, lott number 173; and also a portion of the Little Ida Lode mining claim, lot number 126; and which said claims lie north of and partially adjoining and near to the said Pennsylvania Lode claim on the north. The complainant is not acquainted with the exact mettes and bounds of the said ground owned or claimed by the defendants.

That the said Rarus Lode claim, Johnstown Lode claim, and

Little Ida Lode claim are mineral claims, located under the laws of the United States relative to the appropriation and location of mineral lands, and plaintiff is informed and believes, and therefore alleges that the said claims, or some of them, have been patented by the United States to various parties, and that such patents were issued under and by virtue of the statutes of the United States relative to the patenting of mineral lands upon the public domain.

12 That as plaintiff is informed and believes, and therefore alleges, the said defendants claimed the right to enter upon the premises of this complainant, to wit, that portion of the Pennsylvania Lode claim above described, by reason of the fact that certain veins, owned or claimed by the defendants or in their possession, have their tops or apexes within the ground owned or claimed as a portion of the Rarus Lode claim, a portion of the Johnstown Lode claim, or a portion of the Little Ida Lode claim, and defendants assert the right to follow such veins on their downward courses or dips, although the same so far depart from a perpendicular as to depart from the ground owned or claimed by the defendants, and enter the premises owned and claimed by this complainant, to wit, that portion of the Pennsylvania Lode claim hereinbefore described.

But complainant denies and disputes the fact that the said veins upon which the said defendants have mined within the lines of the Pennsylvania Lode claim, even if such veins have their apices in defendants' ground which complainant does not admit are such veins as can be followed on their dip beyond the lines of the defendants' possessions, and into the ground or premises of this plaintiff; but alleges the facts to be that the said veins are broken and intersected by faults in such a manner that the same cannot be traced or followed from the ground of the defendants into the said Pennsylvania Lode claim, and that therefore the said defendants have no right to enter upon the ground of this plaintiff, to wit, the said Pennsylvania Lode claim, for the purpose of extracting ores therefrom, by reason of their ownership of the apexes of any veins within their ground.

13 And this complainant further shows unto the court, that the veins, upon which the defendants have been extracting ores within the premises of this complainant, if they or any of them have their apices on defendants' ground which complainant does not admit do not in their course or strike depart from the end lines of the defendants' claims or possessions, but that the same depart from the side lines of such claims in such a manner as to prohibit the said defendants from following the same beyond the side lines of their own possessions or claims into plaintiff's portion of said Pennsylvania Lode claim.

That there are several veins which the defendants claim the right to follow on their dips beyond the side lines and into the ground of this complainant, the said Pennsylvania Lode claim, but that neither of the said veins in their courses or strikes depart from the end lines of the said claims or possessions of the defendants, if they have their apices within the defendants' premises at all but complainant alleges

that the ground claimed by the defendants was not so located or situated as to have any end lines whatever, as provided by the statutes of the United States in such cases, and that in consequence of such failure upon the part of the locator or locators of the ground or claims, owned or claimed by the defendants, to mark the same with end lines parallel, or to locate the same along the veins, but on the contrary having located the same across the veins, the said defendants have no extralateral rights in or to any of the veins in their said ground, and are not entitled to follow the same into or upon the ground of this plaintiff, the said portion of the Pennsylvania Lode claim.

14 And your orator further shows to your honors that a patent was issued by the United States to Stanislaus E. Birbour and others to that certain quartz lode claim known as and called the Rarus hereinbefore referred to, a copy of which patent is hereto attached, marked Exhibit "A" and made a part of this bill.

And your orator further shows that a patent has been granted by the United States to William Harris Sr. and others for that certain quartz claim, known as and called the Johnstown claim, a copy of which patent is hereto attached, marked Exhibit "B" and made a part of this bill.

And as showing to your honors that the questions involved in this controversy are questions arising under the statutes of the United States and involving the construction thereof, your orator shows and alleges that the said defendants herein claim to own a portion of the ground patented under both the said Johnstown and Rarus patents and that by virtue of the said Rarus patent, they, the said defendants, have acquired 1,318 linear feet of what is designated and called the Rarus lode and it is contended by the said defendants that under and by virtue of the said Rarus patent they and their predecessors in interest were granted 1,318 linear feet to the Rarus lode extending from what is known as the east end line of the Rarus claim to an imaginary or projected line of the Rarus location.

And your orator further shows to your honors that the surface ground patented to the predecessors in interest of defendant to the Rarus Lode claim do not include to exceed more than about three hundred feet of said Rarus lode and shown in yellow shading on the map attached to the Rarus patent, but that notwithstanding the fact that the surface ground granted by the said Rarus patent did not cover or extend over the said Rarus lode the defendant

15 contends and claim- that the said patent of the Rarus claim granted to them and their predecessors in interest the said Rarus lode beyond the surface ground granted by the Rarus patent and to the full extent thereof of 1,318 linear feet and also contend and claim that by reason of the ownership of the said lode for the length aforesaid, and that by reason of the fact that the same passes through the east end line of the Rarus claim, as patented and the west end line of the original location of the said claim, that they are entitled to follow said veins on their course or dip into the earth

and without the line of the Rarus claim, both as originally located and as patented.

Your orator further shows that a large portion of the ground which it is claimed by the defendant was originally included within the location of the Rarus claim, has been patented under the said Johnstown patent, hereinbefore referred to and as shown by the portion shaded in yellow on the plat attached to the said Johnstown patent.

That notwithstanding that a portion of the Rarus location was patented under the Johnstown claim, the defendants contend and claim that only the surface ground of the Johnstown claim was patented to the patentees therein named and that all veins lying within the original location lines of the Rarus claim were patented to the claimants under the Rarus claim and that defendants are entitled to claim the said veins extending through the Johnstown patent under and by virtue of the Rarus patent and that its extralateral right should be determined by the Rarus and not by the Johnstown patent.

Your orator further shows to your honors that it disputes each and every one of the claims made by the defendants, relative to the construction of said several patents, and claims that all veins, whose apexes lie within the Johnstown patent must be governed
16 and regulated in extralateral rights, if any they have, under the Johnstown patent and not under and by virtue of the Rarus patent.

And your orator further shows to your honors that the defendants claim that if they have no right to follow the veins within the lines of the original Rarus location, by virtue of the said Rarus patent, that they have a right to follow the same under and by virtue of the Johnstown patent or the Johnstown and Rarus patents combined, under and beneath that portion — the Pennsylvania Lode claim belonging to this complainant; but opposed to this contention the complainant contends and insists that the defendants have no right to follow any vein, having its apex either within the Johnstown or Rarus patent, under any circumstances into or under the Pennsylvania Lode claim, at any point east of the intersection of the south side line of the Johnstown patent with the south side line of the original Rarus location.

And your orator further shows to your honors that the said defendants contend and claim that the complainant cannot under any circumstances obtain any relief for ores extracted within that portion of the premises owned by it, without first showing that the apices of the veins from which the ores were extracted, are within the surface lines of the ground owned and claimed by the complainant, whereas your orator claims that *prima facie* it is the owner of all ores found within its boundary extended downward into the earth, until it has been shown that some other person or company has some right thereto by reason of ownership of the apex of the vein within some other claim.

And your orator further shows to your honors that it is claimed by the defendants that the apex of the veins from which the ores in

question were extracted, is divided in that a portion thereof is claimed by the defendants as upon the Rarus Lode claim and a portion thereof upon the Johnstown Lode claim and a portion
17 thereof upon the Pennsylvania Lode claim. And defendants claim that by reason of the said divided apex that they may claim the right to follow the said vein beneath the surface and without the lines of the Rarus and Johnstown claims, under and by virtue of either or both of the said claims, at thier election.

Complainant alleges that if any such veins as is claimed by the defendants exists that they have no extralateral rights, by reason of the fact that the same has a divided apex.

Wherefore, your orator shows to your honors that there is involved in the matters in controversy, between your orator and the said defendants, the numerous questions aforesaid, involving the construction of the statutes of the United States, relative to locating, purchasing and patenting of mineral lands and the construction of such statutes, relative to the right of one claimant to follow veins down to and into the premises of another, under the circumstances and situation of the parties as hereinbefore set out, and also the construction of said statutes in relation to patenting of claims and whether the veins can be patented to one person and the surface to another, and to the right of the Land Department to segregate the surface from the mineral in the ground, granting one to one person and the other to another, and as to whether said action is authorized under and by virtue of said statutes; and also as to whether when an apex of a vein is divided upon the surface part being within the premises granted in one patent and a part within another, as to what, if any extralateral rights, are granted under such circumstances to either party.

Wherefore, your complainant prays that the said defendants, Montana Ore Purchasing Company, F. Augustus Heinze and Arthur P. Heinze, their servants, agents, attorneys and employés, be by this court forever enjoined and restrained from mining or extract-
18 ing any ores from within the limits of that portion of the said Pennsylvania Lode claim, hereinbefore described and from removing therefrom any ores which have heretofore been extracted therefrom or which may hereafter be extracted therefrom, and that until the hearing of the application of this complainant for an injunction and pending the determination of the title to the said premises, that the said defendants, their agents, servants, attorneys and employés be restrained and enjoined from mining or extracting ores from within the said portion of the Pennsylvania Lode claim hereinbefore described and from removing any ores which they have extracted therefrom or any they may hereafter extract therefrom.

Your complainant further prays this honorable court to grant unto your complainant, not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, issuing out of and under the seal of this court to be directed to the said Montana Ore Purchasing Company, F. Augustus Heinze and Arthur P. Heinze, defendants, commanding

them by a day certain to appear before your honors in the court aforesaid, and answer unto this bill of complaint, and abide the order and decree of this court and for such other and further relief as may be meet and equitable in the premises.

JOHN F. FORBIS,
*Of Butte, Montana, Solicitor and Counsel for Complainant.*

THE UNITED STATES OF AMERICA,
*District of Montana, State of Montana,* } ss:
*County of Silver Bow,*

On this 28th day of March 1898, before me, personally appeared John F. Forbis, who being first duly sworn, made solemn oath that he is attorney for the complainant in the above-entitled bill and that all the officers of said complainant are absent from the dis-
19 trict and State of Montana; that he has read the *following* bill of complaint and knows the contents thereof and that the same is true.

JOHN F. FORBIS.

Subscribed and sworn to before me this 28th day of March, 1898.

CHARLES W. BLAIR,
*Deputy Clerk, United States Circuit Court,*
[SEAL.] *Ninth Circuit, District of Montana.*

20 EXHIBIT "A."

THE UNITED STATES OF AMERICA.

General Land Office No., 9457; mineral certificate No. 993.

To all to whom these presents shall come, Greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of Stanislaus E. Hirbour, Joseph Ortyer, Eugene Fornier, Peter Tetrault, and the heirs of Michael Roy, deceased, upon the Rarus lode, accompanied by the certificate of the register of the land office at Helena, in the Territory of Montana, whereby it appears that, in pursuance of the said Revised Statutes of the United States, the said Stanislaus E. Hirbour, Joseph Orytyer, Eugene Fournier, Peter Tetrault, and the heirs of Michael Roy, deceased, did on the twelfth day of May, A. D. 1883, enter and pay for said mining claim or premises, being mineral entry No. 993, in the series of said office, designated by the surveyor general as lot No. 179, embracing a portion of section eighteen (18) in township three (3) north, of range seven (7) west of the principal meridian, in the Summit Valley mining district, in the county of Silver Bow and Territory of Montana, in the district of lands
21 subject to sale at Helena, containing two and ninety-eight hundredths—$\frac{98}{100}$—acres of land, more or less, and according

to the returns on file in the General Land Office, bounded, described and platted as follows, with magnetic variations at twenty (20) degrees east, to wit: Beginning at corner number one, a granite stone 16 x 13 x 8 inches in size, marked "1, M. C. 79," from which corner number one of lot No. 113, patented to W. J. McNamara *et al.*, with their claim upon the Mountain View lode, bears south fifty-seven (57) degrees, fifty-seven (57) minutes west at the distance of one hundred and seventy (170) feet, and the quarter-section corner on north boundary of section eighteen (18) in township three (3) north of range seven (7) west, of the principal meridian, bears north eighty-five (85) degrees, eighteen (18) minutes forty (40) seconds west at the distance of seven hundred and eighty-four and one-tenth ($784\frac{1}{10}$th) feet; thence from said corner No. one south twenty-five (25) degrees, forty (40) minutes west, thirty-five (35) feet, to a granite stone 18 x 18 x 6 inches in size, marked "P. L. M. C. 126–179," situate on northerly boundary of lot No. 126, made for the Little Ida lode, seventy-two and five-tenths ($72\frac{5}{10}$ths) feet, to a granite stone 18 x 16 x 4 inches in size, marked "P. I. M. C. 173–179," situate on northerly boundary of lot No. 173, made for the claim of William Harris, Sr., *et al.*, upon the Johnstown lode, four hundred and twenty-two (422) feet to corner number 2, a granite stone 24 x 8 x 6 inches in size, with mound of stones, marked "2 M. C. 179," from which corner number
22 one of said lot No. 126, the same being corner No. 2 of lot No. 64, patented to C. X. Larabie, with his claim upon the St. Lawrence lode, bears north thirty-five (35) degrees, thirty-four (34) minutes west at the distance of two hundred and ninety (290) feet, and corner number one of said lot No. 173, bears north thirty-one (31) degrees, twenty-four (24) minutes west at the distance of three hundred and thirty-nine (339) feet; thence from said corner No. 2, south sixty-nine (69) degrees twenty-five (25) minutes east, two hundred and seventy-seven (277) feet to a granite stone 18 x 18 x 6 inches in size, marked "P. I. M. C. 126–179," situate on southerly boundary of said lot No. 126, from which corner number three of said lot No. 126 bears north seventy-two (72) degrees, fifty-two (52) minutes east at the distance of four hundred and eighty-two (482), seven hundred (700) feet, to a granite stone 22 x 8 x 6 inches in size, marked "P. I. M. C. 173–179," situate on southerly boundary of said lot No. 173, from which corner No. 3 of said lot No. 173, bears north eighty-five (85) degrees thirty (30) minutes east at the distance of five hundred and sixty-seven (567) feet, eight hundred and seventy-one (871) feet, to a granite stone 18 x 7 x 4 inches in size, marked "P. I. M. C. 172–179," situate on northerly boundary of lot No. 172, made for the claim of William Harris, Sr., *et al.*, upon the Pennsylvania lode, from which corner number two of said lot No. 172, bears south eighty-eight (88) degrees, fifteen (15) minutes east, at the distance of one hundred and thirty (130) feet; number three shaft bears north fifteen (15) degrees west at the distance of one hun-
23 dred and ninety-one (191) feet, and number two shaft bears north twenty-two (22) degrees east at the distance of one hundred and thirty-two (132), ten hundred and seven (1007) feet, to a granite stone 20 x 12 x 4 inches in size, marked "P. I. M. C. 172–179,"

situate on easterly boundary of said lot No. 172, from which corner No. 2 of said lot No. 172 bears north four (4) degrees, thirty (30) minutes east at the distance of forty-four (44) feet, and discovery shaft bears north ten (10) degrees east, at the distance of one hundred and forty-three (143) feet, thirteen hundred and sixteen (1316) feet to corner number three, a granite stone 22 x 10 x 6 inches in size, marked "3 M. C. 179," from which corner No. 2 of said lot No. 172 bears north sixty-one (61) degrees, twenty (20) minutes west, at the distance of three hundred and twenty-one (321) feet; thence from said corner No. 3 north twenty-five (25) degrees, forty (40) minutes east, one hundred and twelve (112) feet, to a point from which the face of a tunnel bears north sixty-five (65) degrees west at the distance of eighty-seven (87) feet, four hundred and forty (440) feet, to corner number four, a granite stone 18 x 8 x 6 inches in size, marked "4 M. C. 179"; thence north seventy (70) degrees, nine (9) minutes, two hundred and forty-six (246) feet to a granite stone 20 x 8 x 5 inches in size, marked "P. I. M. C. 173–179," situate on easterly boundary of said lot No. 173, from which corner number three of said lot No. 173 bears south eight (8) degrees, thirty (30) minutes east, at the distance of two hundred and nineteen (219) feet,
24 seven hundred and sixty-eight (768) feet, to a granite stone 18 x 8 x 6 inches in size, marked "P. I. M. C. 126–179," situate on easterly boundary of said lot No. 126, from which corner number three of said lot No. 126 bears south eight (8) degrees, thirty (30) minutes, at the distance of one hundred and fifty (150) feet, eleven hundred and sixty-eight (1168) feet, to a granite stone 18 x 8 x 8 inches in size marked "P. I. M. C. 173–179," situate on northerly boundary of said lot No. 173, from which the point of intersection of westerly boundary of this claim, with the northerly boundary of said lot No. 173, bears south eighty-five (85) degrees, thirty (30) minutes west, at the distance of one hundred and seventy-four (174) feet; twelve hundred and seventy-eight (1278) feet, to a granite stone 16 x 10 x 6 inches in size, marked "P. I. M. C. 126–179," situate on northerly boundary of said lot No. 126, from which the point of intersection of westerly boundary of this claim with the northerly boundary of said lot No. 126, bears south seventy-two (72) degrees west, at the distance of fifty-six (56) feet, thirteen hundred and eighteen (1318) feet, to the place of beginning, containing two and ninety-eight-hundredths ($2\frac{98}{100}$ths) acres of land, more or less, and embracing thirteen hundred and eighteen (1318) linear feet of the said Rarus lode, as represented by yellow shading in the following plat:

(Here follows map marked p. 25.)

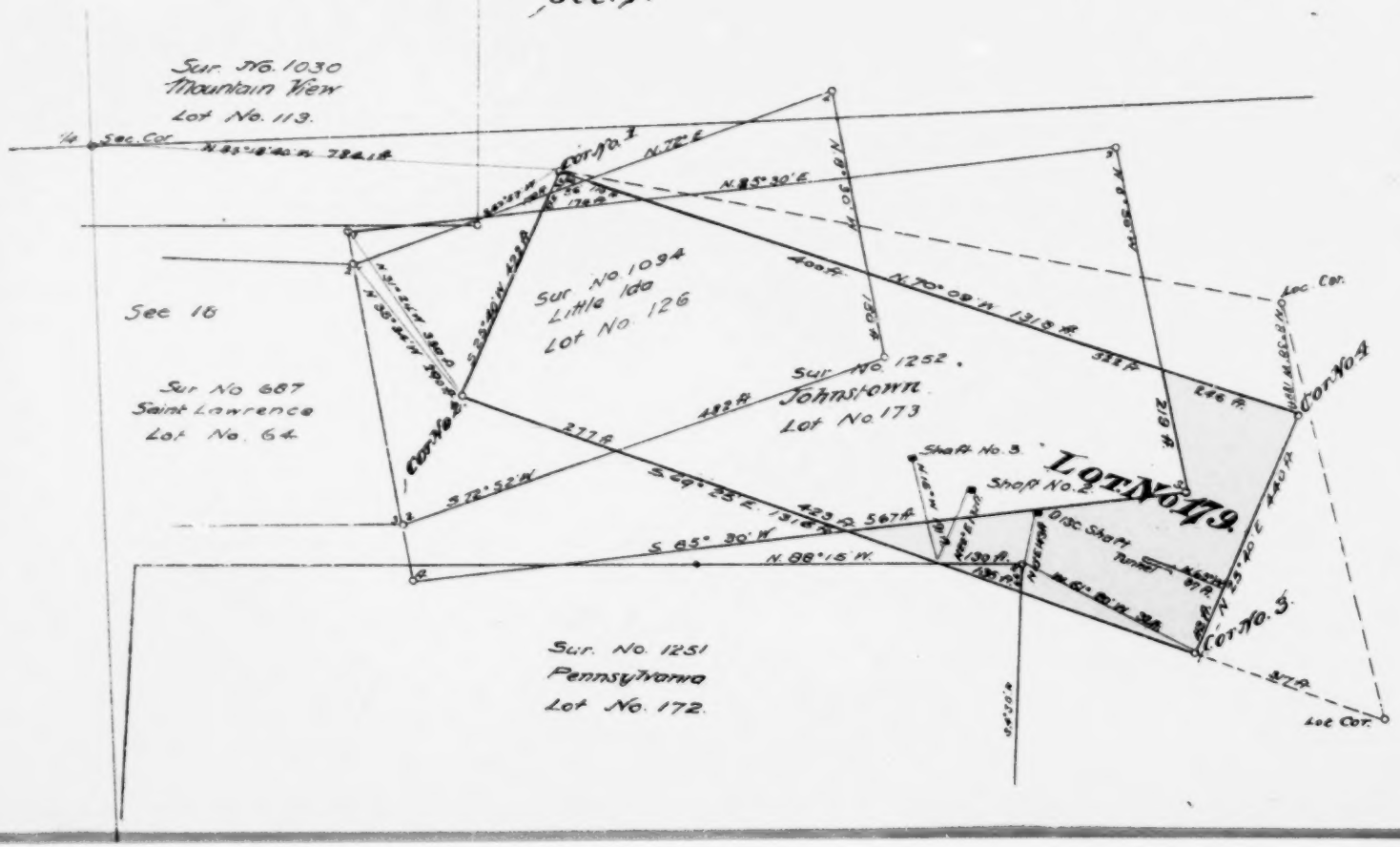
26 Now know ye, that the United States of America, in consideration of the premises, and in conformity with said Revised Statutes of the United States, have given and granted, and by these presents do give and grant, unto the said Stainlas E. Hirbour, Joseph Ortyer, Eugene Fournier, Peter Tetrealt, and the heirs of Michael Roy, deceased, and to their heirs and assigns, the said mining premises hereinbefore described as lot No. 179, em-

13689

# Plat
## of the Claim of
## Stanislas E. Hirbour et al.
UPON THE
## Rarus Lode
Summit Valley Mining District, Silver Bow County
Montana.
Containing 2.98 Acres.
Scale 200 ft to an inch
Var 20° E.

No. 324
B.M.C. Cts. N.C. } 25
M.M. & P. Co. Ltd

## T. 3 N. R 7 W.
Surveyed
## Sec. 7.



bracing a portion of section eighteen (18) in township three (3) north of range seven (7) west of the principal meridian, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of thirteen hundred and eighteen (1318) linear feet of the said Rarus vein, lode, ledge, or deposit for the length hereinbefore described, throughout its entire depth, although it may enter the land adjoining, and also of all other veins, lodes, ledges or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey; provided, that the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or
27 deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits. Excepting and excluding, however, from these present- all that portion of the surface ground: hereinbefore described, which is embraced by said lots Nos. 126, 172 and 173; and provided further, that nothing in this conveyance shall authorize the grantees herein, their heirs or assigns, to enter upon the surface of a mining claim owned or possessed by another. To have and to hold the said mining premises, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said Stainslas E. Hirbour, Joseph Ortyer, Eugene Fournier, Peter Tetrault, and the heirs of Michael Roy, deceased, and to their heirs and assigns forever, subject, nevertheless, to the following conditions and stipulations:

First. That the grant hereby made is restricted to the land hereinbefore described as lot No. 179, with thirteen hundred and eighteen (1318) linear feet of the Rarus vein, lode, ledge, or deposit for the length aforesaid throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depths, as aforesaid, the tops or apexes of which lie inside the exterior lines of said survey.

28 Second. That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge or deposit, the top or apex of which lies outside the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge or deposit.

Third. That the premises hereby conveyed shall be held subject to any vested and approved water rights for mining, agriculture, manufacturing or other purpose, the rights to ditches and reservoirs used in connection with such water rights as may be recog-

nized and acknowledged by the local laws, customs and decisions of courts.

Fourth. That in the absence of necessary legislation by Congress, the legislature of Montana may provide rules for working the mining claims or premises hereby granted, involving easements, drainage and other necessary means to its complete development.

In testimony whereof, I, Chester A. Arthur, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the
29 twenty-fifth day of June, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States one hundred and eighth.

By the President.

CHESTER A. ARTHUR,
By W. H. COOK, *Secretary.*

[General Land Office Seal.]

S. W. CLARK,
*Recorder of the General Land Office.*

"Examined."

Recorded, vol. 112, pages 345 to 348, inclusive.

Filed for record, February 23rd, A. D. 1895, at fifty minutes past nine o'clock a. m.

C. Q. JOHNSON,
*County Recorder,*
By A. E. WHIPPS, *Deputy.*

STATE OF MONTANA, }
*County of Silver Bow,* } ss:

I, John Weston, county clerk and recorder of said county, do hereby certify that the annexed instrument is a full, true and correct copy of the original instrument, as recorded at page 190 in Book C of U. S. Patents, Records of Silver Bow County, Montana.

Attest my hand and the seal of said Silver Bow county hereunto affixed this 18th day of May, 1897.

JOHN WESTON,
*County Clerk and Recorder,*
By J. E. MORAN, *Deputy.*

30 EXHIBIT "B."

THE UNITED STATES OF AMERICA.

General Land Office No., 9893; mineral certificate No. 1012.

To all to whom these presents shall come, Greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, there has been deposited in the General Land Office of the United States, the plat

and field-notes of survey of the claim of William Harris, Sr., William Harris, Jr., John E. Lloyd, Thomas E. Lloyd, Jeremiah Griffith, Thomas Griffith and John H. Davis, upon the Johnstown lode, accompanied by the certificate of the register of the land office at Helena, in the Territory of Montana, whereby it appears that, in pursuance of the said Revised Statutes of the United States, the said William Harris, Sr., William Harris, Jr., John E. Lloyd, David J. Lloyd, Thomas E. Lloyd, Jeremiah Griffith, Thomas Griffith and John H. Davis, did, on the first day of December, A. D. 1883, enter and pay for said mining claim or premises, being mineral entry number 1012 in the series of said office, designated by the surveyor general as lot No. 173, embracing a portion of section eighteen (18),
31 in township three (3) north of range seven (7) west of the principal meridian in the Summit Valley mining district, in the county of Silver Bow and Territory of Montana, in the district of land subject to sale at Helena, containing eighteen (18) acres of land, more or less, and according to the returns on file in the General Land Office, bounded, described and platted as follows, with magnetic variation as hereinafter stated, to wit: Beginning at corner number one, a granite stone 19 x 10 x 6 inches in size, marked "I. M. C. 173," from which the quarter-section corner on north boundary of section eighteen (18) in township three (3) north of range seven (7) west of the principal meridian bears, with magnetic variation at twenty (20) degrees east, north sixty-nine (69) degrees, forty-nine (49) minutes, and twenty-seven (27) seconds west at the distance of four hundred and forty-nine and seven-tenths ($449\frac{7}{10}$) feet, corner number two (2) of lot number one hundred and twenty-seven (127), the Smelter Lode claim bears north sixty-three (63) degrees east at the distance of two hundred and eighteen (218) feet, and corner number one of lot number one hundred and thirteen, the Mountain View Lode claim bears east at the distance of two hundred and twenty-three (223) feet; thence, from said corner number one, north eighty-five (85) degrees thirty (30) minutes east, seventy-three (73) feet to a granite stone eighteen by 8 by 6 inches in size, marked "P. I. M. C. 113–173," situate on southerly boundary of said lot No. 113, from which corner number one of said lot No.
32 113, bears south eighty-seven (87) degrees, thirty (30) minutes east at the distance of one hundred and forty-five (145) feet and the point of intersection of the southerly boundary of said lot No. 113, to the northerly boundary of lot No. 126, the Little Ida Lode claim, bears south eighty-seven (87) degrees, thirty (30) minutes east at the distance of one hundred (100) feet; two hundred and nineteen (219) feet to a granite stone 16 x 12 x 10 inches in size, marked "P. I. M. C. 113–126 and 173," situate on easterly boundary of said lot No. 113, and northerly boundary of said lot No. 126, from which corner number one of said lot No. 113, bears south two (2) degrees, thirty (30) minutes west at the distance of seventeen (17) —, eight hundred and fifty-seven (857) feet to a granite stone 16 x 6 x 5 inches in size, marked "P. I. M. C. 126–173," situate on the easterly boundary of said lot No. 126, from which corner number three of said lot No. 126, bears south eight (8) degrees thirty (30) minutes

east at a distance of three hundred and sixteen (316) feet, thirteen hundred and seventeen (1317) feet to corner number 2 a granite stone 18 x 10 x 8 inches in size, marked "M. C. 173;" thence south eight (8) degrees thirty (30) minutes east six hundred (600) feet, to corner number three, a granite stone 26 x 12 x 6 inches in size, with mound of stones, marked "3 M. C. 173;" thence south eighty-five (85) degrees, thirty (30) minutes west, ten hundred and eighty-five (1085) feet to a granite stone 24 x 16 x 6 inches in size, marked "P. I. M. C. 172–173," situate on northerly boundary of lot No. 172 the Pennsylvania Lode claim, thirteen hundred and seventeen (1317) feet to corner number four a granite stone 33 30 x 12 x 10 inches in size with mound of stones, marked "4 M. C. 173," from which the face of a tunnel bears, with magnetic variation at nineteen (19) degrees, forty-five (45) minutes east, south six (6) degrees east at the distance of six hundred and thirty-nine (639) feet, and corner number one of said lot No. 172, bears north eighty-five (85) degrees, fifteen (15) minutes west at the distance of four hundred and sixty-one (461) —; thence from said corner number four, north eight (8) degrees, thirty (30) minutes west twenty-five (25) feet to a granite stone 18 x 8 x 6 inches in size, marked "P. I. M. C. 172–173," situate on northerly boundary of said lot No. 172, from which corner number one of said lot No. 172, bears north eighty-eight (88) degrees, fifteen (15) minutes west at the distance of four hundred and fifty-six (456) —, and the point of intersection of northerly boundary of said lot No. 172 with the southerly boundary of this claim, bears south eighty-eight (88) degrees, fifteen (15) minutes east at the distance of two hundred and thirty-five (235) feet; ninety-three (93) feet to corner number 3 of lot No. 64, the St. Lawrence Lode claim, and also corner number two, of said lot No. 126, from which corner No. 3 of said lot No. 126 bears north seventy-two (72) degrees, fifty-two (52) minutes east at the distance of eight hundred and sixty-five (865) feet, three hundred (300) feet to a point, from which discovery shaft bears north eighty-five (85) degrees, thirty (30) minutes east at the distance of two hundred and fifty (250) feet, five hundred and forty-six (546) feet to corner number two of said lot number 64, and also corner number one 34 of said lot No. 126, from which the point of intersection of the southerly boundary of said lot No. 113, with the northerly boundary of said lot No. 126, bears north seventy-two (72) degrees east at the distance of one hundred and seventy-four (174) feet, and the point of intersection of the northerly boundary of said lot with the northerly boundary of this claim and easterly boundary of said lot No. 113, bears north seventy-two (72) — east at the distance of two hundred and twenty-two (222) feet; six hundred (600) feet to the place of beginning, containing eighteen (18) acres of land, more or less, and embracing thirteen hundred and seventeen (1317) linear feet of the said Johnstown lode, as represented by yellow shading in the following plat:

(Here follows map marked p. 35.)

# Plat

of the Claim of William Harris, Sr. et al upon the

## Johnstown Lode.

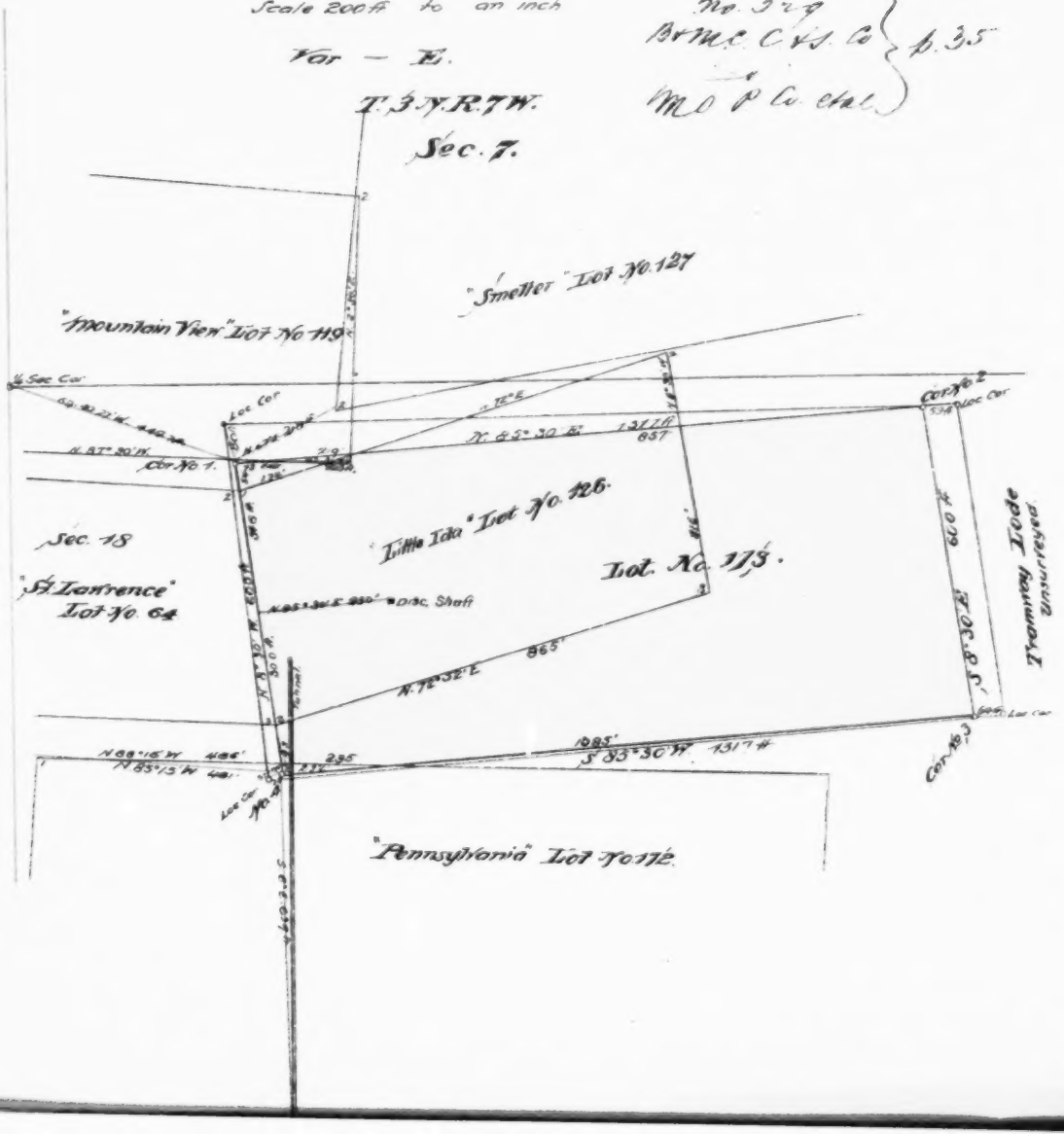
Summit Valley Mining District, Silver Bow County, Montana

Containing 18.00 Acres

Scale 200 ft. to an inch

For — E.

No. 3 & 9
Bt M.C. C & S. Co } b. 3.5
M & P Co. et al



36 Now know ye; that the United States of America, in consideration of the premises, and in conformity of the said Revised Statutes of the United States, have given and granted, and by these presents do give and grant, unto the said William Harris, Sr., William Harris, Jr., John E. Lloyd, David J. Lloyd, Thomas E. Lloyd, Jeremiah Griffith, Thomas Griffith and John H. Davis, and to their heirs, and assigns, the said mining premises hereinbefore described as lot No. 173, embracing a portion of section eighteen (18) in township three (3) north of range seven (7) west of the principal meridian, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of thirteen hundred and seventeen (1317) linear feet of the said Johnstown vein, lode, ledge or deposit for the length hereinbefore described, throughout its entire depth, although it may enter the land adjoining, and also of all other veins, lodes, ledges or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey; provided that the right of possession
37 hereby granted to such outside parts of said veins, lodes, ledges or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges or deposits; excepting and excluding, however, from these presents all that portion of the surface ground hereinbefore described, which is embraced by said lots Nos. 113 and 172. And provided further, that nothing in this conveyance shall authorize the grantees herein, their heirs or assigns, to enter upon the surface of a mining claim owned or possessed by another; to have and to hold said mining premises, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said William Harris, Sr., William Harris, Jr., John E. Lloyd, David J. Lloyd, Thomas E. Lloyd, Jeremiah Griffith, Thomas Griffith and John H. Davis, and to their heirs and assigns forever, subject nevertheless to the following conditions and stipulations:

First. That the grant hereby made is restricted to the land hereinbefore described as lot No. 173 with thirteen hundred and seventeen (1317) linear feet of the Johnstown vein, lode, ledge or deposit for the length aforesaid, through its entire depth as aforesaid, together with all other veins, lodes, ledges or deposits, throughout their entire depths as aforesaid, the tops or apexes of which lie inside the exterior lines of said survey.

38 Second. That the premises thereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge or deposit, the top or apex of which lies outside the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect extend into or

underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge or deposit.

Third. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agriculture, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs and decisions of courts.

Fourth. That in the absence of necessary legislation by Congress, the legislature of Montana may provide rules for working the mining claim or premises hereby granted, involving easement, drainage and other necessary means to its complete development.

In testimony whereof, I, Chester A. Arthur, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the fifteenth day of November, in the year of our Lord one
39 thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

By the President,

CHESTER A. ARTHUR,
By M. McKEAN, *Secretary.*

[Seal of the General Land Office.]

S. W. CLARK,
*Recorder of the General Land Office.*

Recorded vol. 117, pages 329 to 333 inclusive.
Examined.
Filed for record March 12th, A. D. 1890, at 5 minutes past two o'clock p. m.

C. F. BOOTH,
*County Recorder.*

STATE OF MONTANA, } ss:
*County of Silver Bow,* }

I, John Weston, county clerk and recorder in and for said county and State, do hereby certify that the annexed instrument is a full, true, and correct copy of the original instrument as recorded at page 29 in Book B of U. S. Patents, records of Silver Bow county, Montana.

Attest my hand and the seal of said Silver Bow county hereunto affixed this 26th day of March, A. D. 1897.

JOHN WESTON,
*County Clerk and Recorder,*
By A. E. WHIPPS, *Deputy.*

40 Endorsed: (Title of court and cause.) Amended bill of complaint. Filed and entered March 28, 1898. Geo. W. Sproule, clerk, by Charles W. Blair, deputy clerk.

And thereafter to wit, on the 7th day of April 1898, the separate answer of defendant Montana Ore Purchasing Company was filed which is in the words and figures as follows, to wit:

41 In the Circuit Court of the United States, Ninth Circuit, for the District of Montana, Southern Division.

| | |
|---|---|
| BOSTON AND MONTANA CONSOLIDATED Copper & Silver Mining Company, a Corporation, Complainant, *vs.* MONTANA ORE PURCHASING COMPANY, a Corporation; F. Augustus Heinze, and Arthur P. Heinze, Defendants. | In Equity. No. 35. Separate Answer of Montana Ore Purchasing Company to Complainant's Amended Bill of Complaint. |

This defendant, Montana Ore Purchasing Company, now and at all times hereinafter saving to itself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill of complaint, for answer thereto, or to so much thereof, as this defendant is advised it is material or necessary for it to make answer to, answering, says:

I.

That it admits that the complainant is a corporation organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Butte city, Silver Bow county in said State.

That this defendant is now and at all times mentioned in said complaint was a corporation duly organized and existing under and by virtue of the laws of the State of Montana, having its principal place of business at Butte city, Siver Bow county, in said State.

Admits that the complainant is the owner of the surface ground of that portion of the Pennsylvania Lode claim described in its complaint, but denies that the complainant is the owner of or entitled to the lode or veins, or ore bodies upon which the defendant has entered and from which it has extracted the ores in question in this case, and alleges that defendant is the owner of said

42 veins or lodes and ore bodies.

Admits that complainant acquired title to the Pennsylvania Lode claim by *by* virtue of the several deeds of conveyance set out in its amended bill of complaint.

II.

Denies that on or about the first day of April, 1895, or at any other time, or at all, the defendant wrongfully or unlawfully enter upon or into the premises of the complainant, to wit, the Pennsylvania Lode claim as described by it, by underground workings, or tunnels, or shafts, or cross-cuts, or levels, or otherwise or at all, or extracted from the said premises of complainant large or any quantities of valuable ores, or any ores, to the amount of one hundred and fifty thousand (150,000) tons, more or less, or to any amount whatever, or of the value of five hundred thousand dollars ($500,000), more or less, or of any value whatever.

And denies that ever since said time, or at all, defendant has con-

tinued to mine, or extract ores from said premises belonging to the complainant, or is now extracting ores therefrom, or threatens so to do, or that it ever or at all mined or extracted ores from the said premises belonging to the complainant, or threatened so to do, as alleged in complainant's complaint, or otherwise, or at all, and denies that it will do so unless restrained by the injunction of this court.

Denies that complainant's ground is valuable for ores, as alleged in complainant's complaint, and denies that it is these ores, or any ores belonging to the complainant, that defendant has extracted or is extracting, or is threatening to extract therefrom.

Denies that the ground owned by the complainant is of the reasonable value of more than $100,000, and denies that the ores which the defendant is extracting, or is threatening to extract, are of a value in excess of $50,000, or that the same are of any value to the complainant, or that complainant has any right, title, or interest therein or thereto.

43 Denies that the complainant has no means of ascertaining the quantity or value of the ores which the defendant is extracting or may extract from the said premises; and denies that if the defendant is permitted or allowed to continue to extract said ores that it would be uncertain and indefinite as to what amount of ores or the value thereof might be extracted in the future by the defendant; and denies that the complainant would be compelled to rely to a great extent or to any extent upon the good faith or showing of the defendant as to the amount or value of the ores which it has heretofore extracted or may hereafter extract from said premises.

Denies that unless the defendant is enjoined or restrained from mining or extracting ores from said premises, that the complainant will be required to bring numerous actions or any actions for the determination of the damages which it has sustained or will sustain by reason of the extraction of said ores by the defendant; and denies that complainant has sustained or will sustain any damages on account thereof.

And denies that defendant is trespassing upon the premises of complainant, or that any trespasses on the part of defendant are continuing from time to time; and denies that the defendant is intending to trespass upon the premises or rights of the complainant.

And defendant further denies that by reason of the trespasses upon its part on the premises of the complainant, complainant has suffered or will continue to suffer great or irreparable injury or damage, or will suffer any injury or damage at all on account of any act of the defendant; and denies that this defendant is trespassing upon the property of the complainant or threatens so to do.

III.

Defendant denies that the determination of the controversy between the complainant and defendant involves a construction of title 23, chapter 6, of the Revised Statutes of the United States, concerning mines and mineral lands, in the manner stated in com-

plainant's amended bill of complaint, and denies that said
44 controversy involves a construction of the same in any manner or at all, and denies that the controversy between the complainant and defendant involves a construction of any statute of the United States whatever.

Defendant admits that the Pennsylvania Lode claim claimed in part by complainant, is a mining claim located under the provisions of the statutes of the United States relative to the appropriation of mineral lands, and that the same has been patented as a mining claim.

Admits that the Rarus Lode claim, and the Johnstown Lode claim are mineral claims located under the laws of the United States, relative to the appropriation and location of mineral lands, and that the same have been patented under the laws of the United States.

Admits that the defendant owns a portion of that certain lode mining claim known as and called the Rarus Lode claim, lot No. 179, T. 3 N. R. 7 W., in Silver Bow county, Montana, and also a parcel of ground with all the veins, lodes and ledges having their top or apex therein, with all their dips, spurs and angles, which parcel of ground lies within the lines of the Johnstown Lode claim, lot No. 173, T. 3 N. R. 7 W., in Silver Bow county, Montana. And admits that said Rarus and Johnstown Lode claims lie north of and partly adjoining, and near to the Pennsylvania Lode claim.

Denies that the defendant owns any portion of the Little Ida Lode mining claim, lot No. 126.

Defendant alleges that it is the owner of said parcel of ground as above admitted, within the Johnstown Lode claim, and as hereinafter described, and also that it is the owner of that portion of the Pennsylvania Lode claim hereinafter described. Defendant admits that it claims the right to enter upon the premises of complainant, to wit, that portion of the Pennsylvania Lode claim described in its amended bill of complaint by reason of the fact that certain veins
owned and claimed by the defendant, and in its possession,
45 have their top or apices within the said Johnstown Lode claim, lot No. 173, and that portion thereof owned by the defendant, and that the defendant asserts the right to follow such veins on their downward course or dip, although the same so far depart from a perpendicular as to depart from the said Johnstown Lode claim, and from that portion thereof owned by the defendant, and enter the premises owned and claimed by the complainant, to wit, that portion of the Pennsylvania Lode claim described in its said amended bill of complaint. But defendant denies that it claims the right to enter upon the premises of the complainant, to wit; that portion of the Pennsylvania Lode claim described in its amended bill of complaint, by reason of the fact that any veins owned or claimed by defendant or in its possession have their top or apices within the Rarus Lode claim, or in that portion thereof owned by defendant, or by reason of the fact that the same have their top or apices within the Little Ida Lode claim, or any portion thereof, and denies that it asserts the right or any right to follow such veins on their downward course or dip, although the same so far depart from a per

pendicular as to depart from said Rarus Lode claim, and to enter the premises claimed by this complainant; and denies that it asserts or claims the right to enter the premises of the complainant by reason of the fact that any veins owned or claimed by defendant have their top or apices in said lode claim or any part thereof, but alleges that the defendant claims the right to enter the premises of the complainant by reason of the fact that certain veins have their top or apices within that portion of the Johnstown Lode claim owned by defendant, and that it asserts the right to follow such veins on their downward course or dip, although the same so far depart from a perpendicular as to depart from said Johnstown Lode claim and from the portions thereof owned by defendant and to enter the premises of complainant.

And defendant alleges that the vein or lode upon which it has mined within the lines of the Pennsylvania Lode claim and underneath the surface thereof has its top or apex within the Johnstown Lode claim and that portion thereof owned by the defendant. Defendant denies that said veins or lode upon which it has mined within the lines of the Pennsylvania Lode claim are not such
46 veins or is not such a lode as can be followed on their or its course downward or dip beyond the lines of defendant's possessions, to wit, that portion of the Johnstown Lode claim owned by it into the ground or premises of complainant; and denies that said veins or lode are intersected or broken by faults in such manner that the same cannot be followed or traced from the ground of the defendant, to wit, that portion of the Johnstown Lode claim owned by it, into the Pennsylvania Lode claim, and denies that therefore or for any other reason the defendant has not the right to enter upon the ground of complainant for the purpose of extracting ores from said vein or lode by reason of its ownership of the apex of the same within its ground, the said portion of the Johnstown Lode claim.

Defendant alleges that the veins or lode upon which it has been mining within the Pennsylvania Lode claim and underneath the surface thereof have their top or apex within the lines of the Johnstown Lode claim as located and patented, for the entire length of said claim, and running nearly paraliel with the side lines thereof, and that the same pass on their or its strike through the end lines of said Johnstown Lode claim as located and patented, and that said end lines are parallel.

And defendant further alleges, that the veins or lode upon which it has mined within the Pennsylvania Lode claim have their top or apex within that portion of the Johnstown Lode claim owned by it, and that the same can be followed and have been followed continuously on ore on the dip or downward course from the top or apex within the boundary lines of the Johnstown Lode claim and the boundary lines of that portion thereof owned by defendant into the ground owned or claimed by complainant, to wit, the Pennsylvania Lode claim. Defendant denies that the veins or lode from which it has been extracting ores within the premises of complainant do not on their or its course or strike depart from the end lines of defend-

ant's claims or possessions, and denies that the same depart from the side lines thereof in such a manner as to prohibit the
47 defendant from following the same beyond the side lines of its own possession, to wit, that portion of the Johnstown Lode claim owned by it, into complainant's portion of the Pennsylvania Lode claim, and denies that said veins or lode depart from the side lines of defendant's said possession or portion of the Johnstown Lode claim in any manner or at all; and denies they or it enter the Pennsylvania Lode claim in any other manner than upon the dip or downward course on a departure from the perpendicular through the side lines of said Johnstown Lode claim and of that portion thereof owned by the defendant.

Defendant admits that there are one or more veins or a lode which the defendant claims the right to follow on the dip beyond the side lines of the Johnstown Lode claim and that portion thereof owned by the defendant, into the ground of the complainant, the Pennsylvania Lode claim; and denies that any of said veins or said lode in their or its course or strike depart from the side lines of the said Johnstown Lode claim or the portion thereof owned by the defendant, but alleges the fact to be that the same on the course or strike depart from the end lines of said portion of the Johnstown Lode claim owned by the defendant, and from the end lines of said Johnstown Lode claim as located and patented.

Defendant denies that said ground claimed by the defendant, to wit, that portion of the Johnstown Lode claim hereinafter described was not so located or situated as to have any end lines whatever; and denies that the said locator or locators of the ground owned by this defendant did mark the same with end lines not parallel, or did locate the same across said vein or lode; and denies that the said Johnstown Lode claim was not so located or situated as to have any end lines whatever as provided by the statutes of the United States in such cases; and denies that in consequence of the failure on the part of the locator or locators of the said Johnstown Lode claim and the said portion thereof claimed by the defendant to mark the same with end lines parallel,
48 or to locate the same along the veins or vein, or for any other reason the defendant has no extralateral rights in or to any of the veins in its said ground, to wit, the said portion of the Johnstown Lode claim, or has not the right to follow the same into or upon the ground of the complainant. And defendant denies that the locator or locators of the said Johnstown Lode claim located the same across the veins or lode, but alleges that the same was located along the vein or lode, as required by the statutes of the United States and that the same had and has parallel end lines through which the veins and lodes having their top or apex therein pass on their course or strike.

Defendant admits that a patent was issued by the United States to Stanislas E. Hirbour and others for that certain quartz lode claim known as and called the Rarus; and also that a patent has been granted by the United States to William Harris, Sr., and others for that certain quartz lode mining claim known as and

called the Johnstown Lode claim (a copy of which patent is attached to complainant's amended bill of complaint).

And the defendant as showing to your honors that the questions involved in this case are not questions arising under the statutes of the United States, or involving the construction thereof, alleges that it does not claim to own a portion of the ground patented under both the Rarus and Johnstown patents, or that it claims in this action that by virtue of said Rarus patent it has acquired 1318 linear feet of what is designated or called the Rarus lode; and denies that it is contended in this action by the defendant that under and by virtue of said Rarus patent it or its predecessors in interest were granted 1318 linear feet to the Rarus lode, extending from what is known as the east end line of the Rarus claim to an imaginary or projected line of the Rarus location.

Defendant alleges that it claims to own, and does own whatever rights were granted under the patent for the Rarus Lode claim issued by the United States, but that it does not assert any
49 title in this action under said patent as against the complainant, but relies upon its ownership of that portion of the Johnstown and Pennsylvania Lode claims hereinafter described.

Defendant admits that the surface ground granted to the predecessors in interest of the defendant in the Rarus Lode claim is as shown by the yellow shading on the map attached to the Rarus patent, but defendant denies that it contends in this action or claims that the patent for the Rarus Lode claim granted to it or its predecessors in interest the Rarus lode beyond the surface ground granted by the Rarus patent, or to the full extent thereof of 1318 linear feet; and denies that it contends or claims in this action that by reason of the ownership of said lode for the length aforesaid, or by reason of the fact that the same passes through the east end line of the Rarus Lode claim as patented, and the west end line of the original location of said claim, that it is entitled to follow said veins on their course or dip into the earth without the lines of the Rarus Lode claim, either as originally located or as patented.

And defendant alleges that in this action it makes no claim of any right under the Rarus patent to enter upon the veins within the ground claimed or owned by the complainant, but that it asserts its right to do so by reason of its ownership of a portion of the Johnstown Lode claim, and the fact that the top or apices of the veins or lode in question are within said portion of the Johnstown Lode claim.

Defendant admits that a large portion of the ground which was originally included within the location of the Rarus claim has been patented under the said Johnstown patent, and defendant denies that in this action it contends or claims that only the surface ground of the Johnstown claim was patented to the patentees named therein or that all or any veins lying within the original location lines of the Rarus claim were patented to the claimant under the Rarus claim; and denies that it claims or contends that it is
50 entitled to claim the veins extending through the Johnstown patent under or by virtue of the Rarus patent, or that its

extralateral rights should be determined by the Rarus patent and not by the Johnstown patent; but defendant alleges that it contends and claims in this action, and in so far as this controversy between complainant and defendant is concerned, that its extralateral rights to the veins in question should be determined by its ownership of that parcel of ground now included within the Johnstown claim and not by the Rarus, for the reason that said vein- or lode- have their top or apex within the said parcel of ground owned by defendant.

Defendant denies that it makes any claim in this action that if it has no right to follow the veins within the lines of the original Rarus location by virtue of said Rarus patent, that it has a right to follow the same under and by virtue of the Johnstown patent, or of the Johnstown and Rarus patents combined, under and beneath that portion of the Pennsylvania Lode claim belonging to the complainant; and defendant asserts that it does not rely upon any combination of the Johnstown and Rarus patents in this action, but relies upon its ownership of said parcel of ground conveyed to its predecessors by the owners of the Johnstown claim and the Johnstown patent.

Defendant denies that it contends or claims that the complainant cannot under any circumstances obtain any relief for ores extracted within that part of the premises owned by complainant without first showing that the apex of the vein or veins from which the ores were extracted are within the surface lines of the ground owned and claimed by the complainant. And defendant alleges that its only contention upon this point in the case is that the complainant cannot recover for any of the ores extracted by defendant from within that portion of the premises owned by complainant, for the reason that the top or apex of the vein or lode from which
the ores have been extracted is within that parcel of
51 ground owned by defendant, and lying within the lines of
the Johnstown claim, and that it is the owner thereof by virtue of said deed of conveyance; and further that the same depart on the strike through the end lines of the Johnstown Lode claim, and that the same are therefore outside of the ground, owned or claimed by the complainant, and are within the ground owned and claimed by the defendant, and that defendant is therefore the owner of the vein or veins or lode throughout the entire depth of the same to the extent that the apex or top of the same is within the ground owned by defendant, and outside of the ground owned or claimed by the complainant.

And defendant denies that it is claimed by it that the apex of the veins from which the ores in question were extracted is divided, in that the defendant claims that a portion thereof is upon the Rarus Lode claim, and a portion thereof upon the Johnstown Lode claim, and a portion thereof upon the Pennsylvania Lode claim; and defendant denies that the apex of the vein or lode is divided at all, or that it claims or asserts in this action that the same is divided; but defendant avers that it claims that the vein or veins or lode from which the ore in question has been extracted have or has their or

its apex within the Johnstown Lode claim and that the same passes through the end lines thereof, and defendant alleges that the apex of the same is within that portion thereof owned by it.

And defendant alleges that it does not claim that by reason of a divided apex it may claim the right to follow the said vein or veins or lode beneath the surface and without the lines of the Rarus or Johnstown claim under or by virtue of either or both of said claims at its election, or otherwise, and defendant does not claim that by reason of a divided apex of the vein or veins or lode in question that it has a right to follow the same beneath the surface and without the lines of the Johnstown claim. And defend-
ant states that if there is any vein having its top or apex
52 within the Johnstown Lode claim or that portion thereof owned by defendant, and which departs on its strike from the Johnstown claim in such manner as to have a divided apex, that is to say, a portion of the apex within the Johnstown Lode claim, and a portion outside thereof and on the Rarus or Pennsylvania claim, that it does not claim the right to follow the same beneath the surface and without the lines of the Johnstown claim under and by virtue of either or both of the Rarus or Johnstown claims, or at all, and that it does not claim the right to follow the same under the Johnstown claim or patent therefore downward at any point beyond where the entire apex of the vein or lode is within the Johnstown claim and that portion thereof owned by defendant. And defendant therefore shows to your honors that there is not involved in the matters in controversy between the complainant and defendant any questions involving the construction of the statutes of the United States relative to locating, purchasing or patenting mineral lands, or any other statutes of the United States, or any construction of such statutes relative to the right of one claimant to follow veins down to and into the premises of another or any construction of said statutes in relation to the patenting of claims, or whether the vein can be patented to one person and the surface to another, or the right of the Land Office to segregate the surface from the mineral in the ground, or the right to grant one to one person and the other to another, or as to whether said action is authorized under or by virtue of said statutes, or as to whether when the apex of a vein is divided upon the surface, part being within the premises granted in one patent and a part within another, what, if any, extralateral rights are granted under such circumstances to either party.

As there is no controversy between the complainant and the defendant in this action upon any of the matters or things suggested or stated by the complainant in its amended bill of complaint, for the purpose of showing that this court has jurisdiction, defendant
therefore asserts that this court has no jurisdiction of the
53 subject-matter of this action, or the controversies between the complainant and defendant herein.

IV.

This defendant further answering unto said amended bill of complaint, alleges that it is now and at all of the times mentioned in said complaint was the owner, in possession and entitled to the possession of the following-described portion of the Pennsylvania Lode claim, lot No. 172, T. 3 N. R. 7 W., Silver Bow county, Montana, to wit:

Beginning at the northeast corner of lot No. 172, from which corner No. 3 of lot No. 179, the Rarus Lode claim, bears S. 61° 20′ E., 321 feet distant; and running thence N. 88° 15′ W., 133 feet; thence S. 69° 25′ E., 136 feet; thence N. 4° 0′ E., 44 feet to the place of beginning, containing an area of $\frac{7}{10}$ of an acre.

Defendant further alleges that on or about the 24th day of January, 1879, John E. Lloyd, David J. Lloyd, Thomas E. Lloyd, William Harris, Sr., William Harris, Jr., and John H. Davis duly located the Johnstown Lode claim, lot No. 173, T. 3 N., R. 7 W., Silver Bow county, Montana, by compliance with all and singular the requirements of an act of Congress and the local rules, regulations and acts of the Territory of Montana. That said location was so laid along the veins, lode or ledge in said claim that said veins or lode in their course or strike were substantially parallel to the side lines of said claim, and departed from said Johnstown Lode claim through both end lines thereof, and that said lode claim was so located that its end lines as marked upon the ground were parallel to each other. That subsequently thereto such proceedings were had in the United States Land Office that a United States patent was issued to the owners of said Johnstown Lode claim, a copy of which patent is attached to complainant's amended bill of complaint. That the surface area so patented conformed in extent and boundaries to the location thereof theretofore made as above alleged, and that the end lines as described in said patent were and are
54 parallel to each other.

That there was a vein or lode containing valuable metals discovered and located within the boundaries of said claim and that the same had its apex therein, and on its course or strike departed from both end lines of the Johnstown Lode claim as patented.

That the said locators of the said Johnstown Lode claim were at the time said location was made, the owners of the Pennsylvania Lode claim, the greater portion of which is now claimed by the complainant and described in its amended bill of complaint herein.

That on or about the 7th day of March, 1883, the owners of the Johnstown Lode claim and the Pennsylvania Lode claim were the same persons. That the then owners of the said Johnstown and Pennsylvania claims, for a valuable consideration conveyed to the predecessors in interest of this defendant a certain parcel of ground within the lines of the Johnstown claim, which portion is specifically described in the deed of conveyance therefor, made, executed and delivered by said parties to the predecessors in interest of this defendant as follows:

"All the right, title and interest, estate, claim and demand of the said parties of the first part, of, in and to that certain portion, claim and mining right, title and property on that certain ledge, vein, lode or deposit of quartz and other rock in place, containing precious metals of gold, silver and other metals, and situated in the Summit Valley mining district, Silver Bow county, Montana, and described as follows, to wit: Beginning at the southeast corner of lot No. 173, a granite stone 26 x 12 x 6 inches, 20 inches deep, with mound of stone 2½ feet high 4½ feet base alongside the stone and running thence N. 8° 30′ W., 219 feet; thence N. 70° 09′ W., 522 feet, from which corner No. 1, of lot No. 179 bears N. 70° 09′ W., 550 feet distant; thence S. 74° 33′ W., 329 feet; thence S. 25° 40′ W. 235 feet; thence S. 69° 25′ E., 400 feet, thence N. 85° 30′ E., 567 feet to the place of beginning, containing an area of 6 and $\frac{55}{100}$ acres.

All right, title and interest that is now possessed, together
55 with any that may hereafter accrue through application No. 1265, made to the United States Government by the grantors herein for patent for lot No. 173, together with all the dips, spurs and angles, and also all metals, ores, gold, silver and metal-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed, and also all the estate, right, title, interest, possession, claim and demand whatsoever, of the said parties of the first part of, in and to the premises and every part and parcel thereof."

That the predecessors in interest of this defendant immediately after the purchase entered into the possession of the premises so conveyed as aforesaid, and that thereafter this defendant became the owner thereof and at all of the times herein and in the said amended bill of complaint mentioned has been and now is the owner, in possession and entitled to the possession thereof.

And defendant further alleges that at the time said deed, dated the 7th day of March, 1883, was executed and delivered, the grantors therein were the owners of the Pennsylvania Lode claim and also the owners of the Johnstown Lode claim, and that by said deed the grantors therein and the predecessors in interest of the complainant in this case conveyed to the predecessors in interest of defendant all leads, lodes and ledges, with their dips, spurs and angles, beneath the surface of the Pennsylvania Lode claim, which might have their tops or apices within that parcel of ground conveyed by said deed, and that the conveyance of said veins, lode and ledges beneath the surface of the Pennsylvania Lode claim was made by the predecessors in interest of the complainant wholly without regard to the strike of said veins, leads or ledges, and wholly without regard to whether or not they departed or might depart through any particular line or lines of the Johnstown Lode claim.

That by said conveyance the predecessors in interest of the complainant then and there conveyed to the predecessors in
56 interest of this defendant the same leads, veins and ledges which are now claimed by the complainant in this case and

that ever since said time and down to the commencement of this action this defendant and its predecessors in interest have been and this defendant now is in possession, and the owner of whatever leads, loads, veins or ledges may lie beneath the surface of the Pennsylvania Lode claim and which have their tops or apices within the premises conveyed by said deed, which premises lie inside the Johnstown Lode claim regardless of the fact that they may or may not depart through any particular lines of said Johnstown claim, or as to whether or not they depart through the end lines or side lines thereof.

That subsequently, and after the date of said deed to the predecessors in interest of this defendant, and after the said deed had been recorded in the office of the county clerk and recorder of Deer Lodge county, Montana, the grantors named in said deed conveyed to the predecessors in interest of this complainant all the remainder of their right, title and interest at the time of the conveyance in and to that portion of the Pennsylvania claim now claimed by the complainant. Defendant alleges that by virtue of such conveyance to the predecessors in interest of this complainant this complainant and its predecessors in interest acquired no right, title or interest whatever in or to any of the lodes, leads, veins, ledges or mineral deposits which lie beneath the surface of the Pennsylvania Lode claim, and which have their tops or apices within that parcel of ground conveyed to the predecessors in interest of this defendant by said deed of March 7th, 1883, and which lies within the Johnstown Lode claim, for the reason that at the time the said conveyance was made to the predecessors in interest of said complainant, the grantors in said conveyance were not the owners or in possession or entitled to the possession of any of the leads, lodes, veins, ledges or mineral deposits, with their dips, spurs and angles, beneath the surface of the Pennsylvania Lode claim, which had their tops
57 or apices within the premises conveyed to the predecessors in interest of the defendant as aforesaid, and for the reason that the predecessors in interest of defendant were at the time the owners, in possession and entitled to the possession of the same under said deed of conveyance, and that they and this defendant have been ever since said time so the owners, in possession and entitled to the possession of the same.

Defendant alleges that the said locators of the Johnstown Lode claim, being the owners of the Pennsylvania Lode claim at the time, as hereinbefore stated by their location of the Johnstown Lode claim, represented to the predecessors in interest of this defendant, and to this defendant, that they, the said locators had located the said Johnstown Lode claim in accordance with the requirements of the laws of the United States, and that they had located the same along the veins, and that all veins having their top or apex therein departed on their course or strike through the end lines of the Johnstown Lode claim.

That the complainant is the successor in interest of said locators in a portion of said Johnstown Lode claim, and is also their successor in interest in the Pennsylvania Lode claim. Defendant further

alleges that under and by virtue of said deed of conveyance for said portion of the Johnstown Lode claim hereinbefore mentioned, it is the owner and entitled to all the veins, lodes, ledges and deposits within or having their top or apex within the said portion of the Johnstown Lode claim throughout their entire depth, together with all the dips, spurs and angles, and also all the metals, ores, gold, silver and metal-bearing quartz, rock and earth therein although the same may depart on their course downward from within the lines of that portion of the Johnstown Lode claim and enter beneath the surface of the Pennsylvania Lode claim; and that said complainant by reason of the fact that said Johnstown Lode claim was located by the persons before named, and that said persons were the owners thereof, and of the Pennsylvania Lode claim at the time said
58 above-mentioned deed was executed and delivered to the predecessors in interest of this defendant, and by reason of the execution and delivery of said deed is estopped from denying its right thereto or to any of the veins, lodes, or ledges dipping under the surface of the Pennsylvania claim, but apexing in said premises described in said deed.

This defendant admits that during the time from April first 1895, up to the commencement of this action, but not at any time while the complainant was the owner of the veins or lode in question in this suit, and not wrongfully or unlawfully, that it did enter into the premises described by complainant, to wit, the Pennsylvania Lode claim by means of underground workings, and by stopes and levels, and did extract ore therefrom, to wit, about 72,000 tons and no more, of the value of $50,000 and no more, and converted the same to its own use, as it had a good right to do, and in good faith and believing at the time, as it does now believe that it was and is the owner of and had a right to all of said ores, minerals and metals which it extracted therefrom. And defendant avers that the complainant had at all of the times during which defendant was extracting ore from within the boundary lines of the Pennsylvania Lode claim extended downward vertically, full knowledge thereof, and of the value thereof, and that the complainant admitted during all of said time that the same belonged to the defendant.

Wherefore, defendant says that the complainant is and ought to be estopped from now asserting any right or title to said ores, or maintaining this suit against defendant for extracting the same or for the value thereof.

Defendant further says that during all of said time it was the owner, in possession and entitled to the possession of the above and foregoing described parcel of land within the lines of the Johnstown Lode claim and of all ores, minerals and metals, rights, privileges and appurtenances thereto belonging and all veins, lodes or ledges throughout their entire depth the top or apex of which lie within the surface lines of said portion of the
59 Johnstown Lode claim extended downward vertically, although the said veins, lodes or ledges so far depart from a perpendicular in their course downward as to extend outside the surface lines of the Johnstown Lode claim as located and patented,

extended downward vertically, provided that the right of possession of said defendant to such outside parts of such veins, lodes or ledges be confined to such portions thereof as lie between ver-ical planes drawn downward at the surface one through the easterly end line of said Johnstown Lode claim, and the other through the westerly end line of that portion, owned by the defendant at the point where said veins or lode depart therefrom and so continued in their own direction that said vertical planes will intersect such exterior parts of such veins or lodes; and the defendant alleges that the ores, minerals and metals which it has extracted from within the Pennsylvania Lode claim were extracted by it from a vein, or lode, or ledge, the top or apex of which lies within the surface lines of said Johnstown Lode claim and that portion thereof owned by it, and within planes drawn downward at the surface as aforesaid, and that said vein or veins, lode or ledge on its or their course or strike pass through both end lines of the said Johnstown Lode claim and pass through both end lines of that portion thereof owned by the defendant, and so far depart from a perpendicular in a downward course as to extend outside of the vertical side lines of the said Johnstown Lode claim and to enter beneath the surface of the Pennsylvania Lode claim, and that said vein or veins, lode or ledge and all ores, minerals or metals which the defendant has extracted therefrom were and are the property of defendant, but that none of such ores, minerals or metals were extracted by the defendant from said outside parts of such vein, lode or ledge except from such portions thereof as lie between ver-ical planes drawn downward at the surface as above stated.

And defendant further alleges that it is the owner and entitled to the possession of said vein or lode and all the ores, minerals
60 and metals therein contained throughout the entire depth of the same within the planes of said lines drawn downward at the surface as aforesaid.

And this defendant further alleges that at and prior to the time of the execution and delivery of the deed for said portion of the Johnstown Lode claim now owned by the defendant, there was a controversy existing between the owners of the Pennsylvania Lode claim and the predecessors in interest of this defendant, and that in order to settle said controversy, and for a valuable consideration paid to them by the predecessors in interest of this defendant in said portion of said Johnstown Lode claim the owners of the Pennsylvania Lode claim being then the owners of the Johnstown Lode claim, made, executed and delivered the deed aforesaid to the predecessors in interest of this defendant for said portion of the Johnstown Lode claim and agreed with them that they should thereafter be the owners of all veins, lodes, deposits, and valuable minerals contained in said portion of the Johnstown and in all the dips, spurs, and angles thereof to the utmost depths of the same, even though the same should depart from said portion of the Johnstown Lode claim and enter beneath the surface of the Pennsylvania Lode claim.

And defendant further alleges that ever since said agreement and the execution and delivery of the deed before mentioned, the said

owners of the said Johnstown and Pennsylvania Lode claims, including the complainant herein, have always admitted and recognized said agreement to the full extent as above set forth, up to the time when complainant instituted this suit.

Defendant denies that the complainant is the owner of or entitled to the possession of the vein, or veins, or lode within the lines of the Pennsylvania claim upon which the defendant has entered, and from which it has taken or extracted the ores in question, and asserts that it is the owner thereof and entitled to all the ores, minerals and metals therein contained and that its said
61 ownership therein has been admitted by the complainant and its predecessors in interest under said contract and agreement above mentioned and said deed of conveyance, and that therefore the complainant is and of right should be estopped from now claiming the same or asserting any title thereto.

V.

Defendant further alleges that for the purpose of mining and extracting the ores from said vein or lode beneath the surface of the said Pennsylvania Lode claim and for hoisting the same, it incurred large expense before the same were mined or extracted, in building large hoisting works and appliances, and placing therein large boilers, engines and machinery, to wit, in the sum of $57,500 and for sinking shafts, running cross-cuts, levels and drifts for the purpose of mining and extracting the ores it incurred large expense, to wit, the sum of $118,000. That at and before the time said defendant built said hoisting works, placed machinery therein, sunk said shafts and run said cross-cuts, levels and drifts, and at all the times during which the same was being done, the complainant well knew that the same was being done for the purpose of mining and extracting the said ores and knew that ores were being extracted from within the boundaries of said Pennsylvania claim as claimed by the complainant, and the complainant did not object thereto, but on the contrary admitted that said veins or vein, or lode from which defendant was extracting ores from within the boundary lines of the Pennsylvania claim were the property of defendant, and that said defendant was the owner of said ores and vein or veins or lode and had a good right to mine the same.

And defendant alleges that if it is now enjoined or restrained from extracting ore from said vein or veins or lode it will suffer great and irreparable losss and damage by reason of being deprived thereof and by reason of being obliged to keep the openings therein timbered in the sum of — dollars.

Wherefore, this defendant alleges that said complainant is
62 and should be estopped from alleging any trespass against this defendant, or from claiming any right to the veins, ores or minerals claimed by it, or from asserting that this defendant has no right to enter into said Pennsylvania Lodelclaim underneath the surface thereof and to extract the ores, minerals and metals therefrom to the extent herein claimed by this defendant.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged without this, that there is any other matter, cause or thing in the complainant's said amended bill of complaint contained material or necessary for this defendant to make answer to and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and expenses in this behalf most wrongfully sustained.

MONTANA ORE PURCHASING CO.,
[CORPORATE SEAL.] By JOHN MACGINNISS, *V. P.*
JOHN J. McHATTON,
*Of Butte, Montana, Solicitor and Counsel for Defendant.*
CLAYBERG & CORBETT,
*Of Butte, Montana, Solicitor and Counsel for Defendant.*
R. B. SMITH,
*Of Helena, Montana, Solicitor and Counsel for Defendant.*
J. F. VAILE,
*Of Denver, Colorado, Counsel for the Defendant.*

63 THE STATE OF MONTANA, } ss:
*County of Silver Bow,* }

John MacGinniss being duly sworn on oath deposes and says: That he is an officer of the above-named defendant corporation, Montana Ore Purchasing Company, to wit, the vice-president thereof; that he has heard read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

JNO. MACGINNISS.

Subscribed and sworn to before me this 6th day of April, A. D. 1898.

JOHN J. McHATTON, [NOTARIAL SEAL.]
*Notary Public in and for Silver Bow County,*
*State of Montana.*

(Endorsed:) Title of court and cause. Separate answer of Montana Ore Purchasing Co., to complainant's amended bill of complaint. Filed and entered, April 7, 1898. Geo. W. Sproule, clerk.

64 And thereafter to wit, on the 29th day of March 1899, a decree was duly signed filed and entered herein dismissing said cause for want of jurisdiction, which said decree is in the words and figures as follows, to wit:

65 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

BOSTON AND MONTANA CONSOLIDATED COPPER and Silver Mining Company, a Corporation, Complainant,
*vs.*
MONTANA ORE PURCHASING COMPANY, a Corporation; F. Augustus Heinze, and Arthur P. Heinze, Defendants.
} Decree. No. 35

This cause coming on regularly before the court on the — day of March, 1899, to be heard, and the mandate of the United States circuit court of appeals, ninth circuit, being filed and entered upon the minutes herein, now, upon motion of John J. McHatton and Clayberg and Corbett, solicitors and counsel for defendants, and in accordance with the directions of the said mandate,

It is ordered that the amended bill herein be dismissed with costs to the defendants.

And it appearing from the mandate of the said court of appeals that the defendants are entitled to the sum of seven hundred and seventy-three and $\frac{45}{100}$ ($773.45) dollars costs, on the appeal taken herein, which costs have heretofore been taxed and included in said mandate.

It is ordered, adjudged and decreed that said defendants have and recover from the complainant said sum of seven hundred and seventy-three and $\frac{45}{100}$ dollars, costs as aforesaid.

By the court this 29th day of March, 1899.

HIRAM KNOWLES, *Judge.*

Decree. Filed and entered Mar. 29, 1899, Geo. W. Sproule, clerk by Chas. W. Blair, dep. clerk.

66 And thereafter to wit, on the 30th day of March 1899, a bill of exceptions was duly signed settled and allowed herein which is in the words and figures as follows, to wit:

67 In the Circuit Court of the United States, Ninth Circuit, District of Montana, Southern Division.

BOSTON AND MONTANA CONSOLIDATED COPPER and Silver Mining Company, a Corporation, Complainant,
*vs.*
MONTANA ORE PURCHASING COMPANY, a Corporation; F. Augustus Heinze, and Arthur P. Heinze, Defendants.
} In Equity. No. 35.

This cause came on for hearing upon the application of the defendants, Montana Ore Purchasing Company, F. Augustus Heinze and Arthur P. Heinze, to dismiss this action upon the ground and for the reason that there was no Federal question presented by the

allegations in plaintiff's amended complaint herein, and the defendants' answer thereto, and the said application having been submitted to and duly considered by the court, the court rendered its decision herein sustaining said application to dismiss, upon the ground and for the reason that the court has no jurisdiction of said action.

To the ruling of the court in sustaining said application to dismiss and entering a decree of dismissal therein, the complainant in said action duly excepted and asks the court to sign and seal this its bill of exceptions, which was done accordingly in open court this 29th day of March 1899.

HIRAM KNOWLES, *Judge.*

Bill of exceptions. Filed March 30, 1899, Geo. W. Sproule, clerk by Chas. W. Blair, dep. clerk.

68 And thereafter to wit, on the 30th day of March, 1899, a certificate of question of jurisdiction on appeal was duly signed and filed herein which is in the words and figures as follows, to wit:

69 In the Circuit Court of the United States, Ninth Circuit, District of Montana, Southern Division.

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| Boston and Montana Consolidated Copper and Silver Mining Company (a Corporation), Complainant, vs. Montana Ore Purchasing Company, a Corporation; F. Augustus Heinze, and Arthur P. Heinze, Defendants. | In Equity. No. 35. |

Certificate of question of jurisdiction upon appeal from the circuit court of the United States, ninth circuit, district of Montana, southern division, to the Supreme Court of the United States.

This cause coming on for hearing upon the application of the defendants, Montana Ore Purchasing Company, F. Augustus Heinze and Arthur P. Heinze to dismiss said action on the ground of want of jurisdiction in this court to consider the same, and said application having been submitted to and fully considered by this court, said application to dismiss was sustained, and a decree dismissing the same duly entered by this court for the reason and upon the ground that the court had no jurisdiction of said action, upon the facts alleged in complainant's amended bill of complaint, and the answer of the Montana Ore Purchasing Company, thereto, and said complainant being desirous of taking an appeal from the decree of the court sustaining said application to dismiss, and entering said decree of dismissal, and having this day applied to this court
70 for a certificate as required by law in such cases,

The court hereby certifies to the Supreme Court of the

United States for a decision upon the following question of jurisdiction, which has arisen upon said application to dismiss, whether or not said court had jurisdiction, and whether or not a Federal question is presented in complainant's amended bill of complaint and the answer of the Montana Ore Purchasing Company thereto.

That said allegations in said complainant's amended bill of complaint are as follows, to wit:

71 That your orator is now and at all the times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Butte city, in Silver Bow county, in the State of Montana.

That the defendant, Montana Ore Purchasing Company, is now and at the time hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Butte city, in Silver Bow county, in the State of Montana.

I.

That your orator is the owner and entitled to the possession of that portion of the following-described property, known as and called the Pennsylvania Lode mining claim, lot number 172, situated in Summit Valley mining district, Silver Bow county, Montana, which is particularly bounded and described as follows, to wit:

Beginning at corner number one, from which the quarter-section corner on north boundary of section eighteen in township
72 three, north of range seven west of the principal meridian for Montana bears north three degrees fifty-seven minutes west seven hundred and thirteen feet distant, and corner number three of lot number 64, St. Lawrence Lode claim, and corner number two of lot number 126, the Little Ida Lode claim, bears north eighty-three degrees ten minutes east four hundred and forty-nine feet distant; thence, first course, magnetic variation 19 degrees 45 minutes east south 88 degrees 15 minutes east 56 feet, to a point on east end line of lot 147, the Rob Roy Lode claim; for point of intersection of said lots 147 and 172, from which corner number 5 of said lot 147 bears south 11 degrees east two hundred and ninety-six feet distant; one thousand five hundred feet to corner number two; thence, second course, magnetic variation 20 degrees east, south 4 degrees 30 minutes west 564.6 feet to a point on north boundary line of mineral application 722, a placer claim, from which the northwest corner of said mineral application 722, which is also the northeast corner of mineral application 686, a placer claim, bears west 183.9 feet distant; six hundred feet to corner number three; thence, third course, magnetic variation 20 degrees east, north 88 degrees 15 minutes west 181.3 feet to a point on the west boundary line of said mineral application 722, and east boundary line of said mineral application 686, from which the northwest corner of said mineral application 722 and the northeast corner of said mineral application 686 bears north 29.8 feet distant; nine hundred and twenty-

four feet to a point over a tunnel, from which the mouth of
73 said tunnel bears south 58 feet distant; eleven hundred and fifty-six and two-tenths feet to a point on the north boundary line of said mineral application 686, from which the northeast corner of said mineral application 686 bears east 974.4 feet distant; fifteen hundred feet to corner number four, from which the southwest location corner bears south four degrees 30 minutes west 48 feet distant; discovery shaft bears north 70 degrees 30 minutes east 827 feet distant; corner number five of said lot 147 bears north 27 degrees 30 minutes east 344 feet distant and corner number three of lot 146, the Grant Extension lode, bears south 36 degrees 45 minutes west 152 feet distant; thence, fourth course, magnetic variation 20 degrees east north 4 degrees 30 minutes east 325 feet to a point on south side line of said lot 147, for point of intersection of said lots 147 and 172, from which corner number five of said lot 147 bears south 82 degrees 4 minutes east 135 feet distant; six hundred feet to corner number 1, the place of beginning. Expressly excepting and excluding herefrom all that portion of the ground heretofore described, embraced in said mining claim or lot number 147; also mineral applications number 686 and 722; and also all that portion of said Pennsylvania lode; also all veins, lodes or ledges throughout their entire depth, the tops or apexes of which lie inside of such excluded ground. Also excepting and excluding herefrom all that portion of the said above-described Pennsylvania Lode claim described as follows, to wit: Beginning at the northeast corner of lot num-
74 ber 172; and running thence north 88 degrees 15 minutes west 130 feet; thence south 69 degrees 25 minutes east 136 feet; thence north 4 degrees 30 minutes east 44 feet to the place of beginning, and containing an area of $\frac{7}{100}$ of an acre of ground.

That this plaintiff became and was and is the owner of the said premises, in the following manner, to wit:

That on the 18th day of June, 1877, William Harris, Sr., and William Harris, Jr., duly located the said Pennsylvania Lode claim as a quartz lode mining claim.

That on the 13th day of January, 1879, the said William Harris, Sr., and William Harris, Jr., duly conveyed to John E. Lloyd, David J. Lloyd, and Thomas E. Lloyd, by regular deed of conveyance, a one-half undivided interest in and to the said Pennsylvania Lode claim.

That on the 13th day of January, 1879, William Harris, Sr., and William Harris, Jr., duly conveyed to John H. Davis, by regular deed of conveyance, an undivided one-sixth interest in and to the said Pennsylvania Lode claim.

That on the 19th day of May, 1879, the said John H. Davis duly conveyed to William Harris, Sr., by regular deed of conveyance, a one-twelfth undivided interest in and to the said Pennsylvania Lode claim.

That on May 19th, 1879, the said John H. Davis duly conveyed to John Dunstan, by regular deed of conveyance, a one-twelfth undivided interest in and to the said Pennsylvania Lode claim.

75 That on March 13, 1880, David J. Lloyd conveyed to Wm. W. Thomas, by regular deed of conveyance, an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 14th day of August, 1880, William Harris, Sr., and William Harris, Jr., conveyed to Thomas Griffith, by regular deed of conveyance, an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on July 6, 1882, Thomas C. Porter and Howell M. Thomas, the duly appointed, qualified and acting administrators of the estate of William W. Thomas, deceased, duly authorized and empowered, conveyed by regular deed of conveyance to John E. Lloyd an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 19th day of July, 1882, the said John E. Lloyd, by regular deed of conveyance, conveyed to Jeremiah Griffith an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 15th day of August, 1883, the said William E. Harris, Jr., and Anna Harris, his wife, by regular conveyance, conveyed to Thomas Griffith an undivided one-eighth interest in and to the said Pennsylvania Lode claim.

76 That on the 9th day of April, 1886, a United States patent for the said Pennsylvania Lode claim, was duly issued by the United States to William Harris, Sr., William Harris, Jr., John E. Lloyd, David J. Lloyd, Thomas E. Lloyd, Jeremiah Griffith, Thomas Griffith, and John Dunstan.

That on the 28th day of March, 1888, the said Jeremiah Griffith, by regular deed of conveyance, conveyed to Enoch Grim an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 31st day of March, 1888, the said John E. Lloyd, Margaret Lloyd, his wife, Jeremiah Griffith, Enoch Grim, John H. Davis and Laura Davis, his wife, Thomas E. Lloyd, John Dunstan and Sarah Dunstan, his wife, William Harris, Sr., and Barbare Harris, his wife, William Harris, Jr., and Anna Harris, his wife, Thomas Griffith, and David J. Lloyd, by John E. Lloyd, his attorney-in-fact, by regular deed of conveyance, conveyed to Thomas Couch all that portion of the said Pennsylvania Lode claim, hereinbefore described as the property of this complainant, excepting a right of way to the Montana railway.

That on the 30th day of November, 1888, by regular deed of conveyance, the said Thomas Couch and Rachel Couch, his wife, conveyed to this complainant, The Boston and Montana Consolidated Copper and Silver Mining Company all that portion of the
77 said Pennsylvania Lode claim, hereinbefore described as the property of this complainant, and that thereby, and by virtue of the said conveyances, this complainant became and was and is the owner of the said premises hereinbefore described.

That on or about the 1st day of April, 1895, the said defendants wrongfully and unlawfully entered upon and into the said premises, hereinbefore described, by underground workings, and by tunnels,

shafts, cross-cuts, and levels, and extracted from the said premises large quantities of valuable ores, to wit, one hundred and fifty thousand tons, more or less, and of the reasonable value of five hundred thousand dollars.

And that ever since the said date the said defendants have continued to extract and mine ores from the said premises belonging to this complainant, and are now mining and extracting ores therefrom, and threaten to continue to do so unless this court shall by its injunction restrain and enjoin the said defendants from so doing.

That the said ground of this complainant is valuable almost exclusively for the mineral therein contained, and that the same is very valuable for the copper and silver and gold ores which are found therein in large quantities, and that it is these ores that the defendants have extracted, and which they are now extracting and mining and threaten to continue to extract in the future.

78 That said ground owned by complainant, hereinbefore described, is of the reasonable value of more than one hundred thousand dollars, and that the said ores which the defendants are extracting, and threaten to extract are of a value in excess of fifty thousand dollars.

The complainant further alleges that it has no means of ascertaining the quantity or value of the ores which the said defendants are extracting or may extract from the said premises owned by this complainant, and that if the defendants are permitted and allowed to continue to extract the said ores from the said premises that it would be altogether uncertain and indefinite as to what amount of ores, or the value thereof, which may be extracted in the future as in the past, and that this complainant will be compelled to rely to a great extent upon the good faith and showing of the defendants as to the amount and value of the ores which they have heretofore and may hereafter extract from the said premises.

That unless the defendants are enjoined and restrained from mining and extracting the ores from the said premises of this complainant, the said portion of the said Pennsylvania Lode claim, this complainant will be required to bring numerous actions for the determination of the damages which it has sustained and will sustain by reason of such trespasses, and that the said trespasses on the part of the said defendants are continuing from time to

79 time, and that this complainant brings this action in order to avoid a multiplicity of actions in the premises.

That by reason of the said trespasses on the part of the said defendants on the premises of this complainant, this complainant has suffered and will continue to suffer great and irreparable injury and damage.

That on or about the 6th day of March, 1897, this complainant brought an action in the circuit court of the United States, ninth circuit, for the district of Montana, southern division, against the said defendants, to recover of the said defendants for the ores extracted from the said portion of the Pennsylvania Lode claim, hereinbefore described, and that the said action is now pending in this court.

And, as showing the jurisdiction of this court to determine the said matters set forth in the said action, this complainant alleges:

That the determination of the said controversy between the said complainant and the said defendants involves the construction of title twenty-three, chapter VI, of the Revised Statutes of the United States, concerning mines and mineral lands, in this, to wit:

That the said Pennsylvania Lode claim, owned and claimed by this complainant, as hereinbefore alleged, is a mining claim duly located under the provisions of the statutes of the United
80 States relative to the appropriation of mineral lands, and that the same has been patented as a mining claim under the provisions of the said statutes.

That the said defendants own or claim to own a portion of that certain quartz lode claim known as and called the Rarus Lode claim, lot number 179; and also a portion of that certain other quartz lode mining claim, known as and called the Johnstown Lode claim, lot number 173; and also a portion of the Little Ida Lode mining claim, lot number 126; and which said claims lie north of and partially adjoining and near to the said Pennsylvania Lode claim on the north. The complainant is not acquainted with the exact metes and bounds of the said ground owned or claimed by the defendants.

That the said Rarus Lode claim, Johnstown Lode claim, and Little Ida Lode claim are mineral claims, located under the laws of the United States relative to the appropriation and location of mineral lands, and plaintiff is informed and believes, and therefore alleges that the said claims, or some of them, have been patented by the United States to various parties, and that such patents were issued under and by virtue of the statutes of the United States relative to the patenting of mineral lands upon the public domain.

That as plaintiff is informed and believes, and therefore
81 alleges, the said defendants claimed the right to enter upon the premises of this complainant, to wit, that portion of the Pennsylvania Lode claim above described, by reason of the fact that certain veins, owned or claimed by the defendants or in their possession, have their tops or apexes within the ground owned or claimed as a portion of the Rarus Lode claim, a portion of the Johnstown Lode claim, or a portion of the Little Ida Lode claim, and defendants assert the right to follow such veins on their downward courses or dips, although the same so far depart from a perpendicular as to depart from the ground owned or claimed by the defendants, and enter the premises owned and claimed by this complainant, to wit, that portion of the Pennsylvania Lode claim hereinbefore described.

But complainant denies and disputes the fact that the said veins, upon which the said defendants have mined within the lines of the Pennsylvania Lode claim, even if such veins have their apices in defendants' ground which complainant does not admit are such veins as can be followed on their dip beyond the lines of the defendants' possessions, and into the ground or premises of this plaintiff; but alleges the facts to be that the said veins are broken and

intersected by faults in such a manner that the same cannot be traced or followed from the ground of the defendants into the said Pennsylvania Lode claim, and that therefore the said defendants have no right to enter upon the ground of this plaintiff, to wit, the said Pennsylvania Lode claim, for the purpose of extracting ores therefrom, by reason of their ownership of the apexes of any veins within their ground.

82 And this complainant further shows unto the court, that the veins, upon which the defendants have been extracting ores within the premises of this complainant, if they or any of them have their apices on defendants' ground, which complainant does not admit do not in their course or strike depart from the end lines of the defendants' claims or possessions, but that the same depart from the side lines of such claims in such a manner as to prohibit the said defendants from following the same beyond the side lines of their own possessions or claims into plaintiff's portion of said Pennsylvania Lode claim.

That there are several veins which the defendants claim the right to follow on their dips beyond the side lines and into the ground of this complainant, the said Pennsylvania Lode claim, but that neither of the said veins in their courses or strikes depart from the end lines of the said claims or possessions of the defendants, if they have their apices within the defendants' premises at all but complainant alleges that the ground claimed by the defendants was not so located or situated as to have any end lines whatever, as provided by the statutes of the United States in such cases, and that in consequence of such failure upon the part of the locator or locators of the ground or claims, owned or claimed by the defendants, to mark the same with end lines parallel, or to locate the same along the veins, but on the contrary having located the same across the veins, the said defendants have no extralateral rights in or to any of the veins in their said ground, and are not entitled to follow the same into or upon the ground of this plaintiff, the said portion of the Pennsylvania Lode claim.

83 And your orator further shows to your honors that a patent was issued by the United States to Stanislaus E. Hirbour and others to that certain quartz lode claim known as and called the Rarus hereinbefore referred to, a copy of which patent is hereto attached, marked Exhibit "A" and made a part of this bill.

And your orator further shows that a patent has been granted by the United States to William Harris, Sr. and others for that certain quartz claim, known as and called the Johnstown claim, a copy of which patent is hereto attached, marked Exhibit "B" and made a part of this bill.

And as showing to your honors that the questions involved in this controversy are questions arising under the statutes of the United States and involving the construction thereof, your orator shows and alleges that the said defendants herein claim to own a portion of the ground patented under both the said Johnstown and Rarus patents and that by virtue of the said Rarus patent, they, the said defendants, have acquired 1318 linear feet of what is

designated and called the Rarus lode and it is contended by the said defendants that under and by virtue of the said Rarus patent they and their predecessors in interest were granted 1318 linear feet to the Rarus lode extending from what is known as the east end line of the Rarus claim to an imaginary line or projected line of the Rarus location.

And your orator further shows to your honors that the surface ground patented to the predecessors in interest of defendant to the Rarus Lode claim do not include to exceed more than about three hundred feet of said Rarus lode and shown in yellow shading on the map attached to the Rarus patent but that notwithstanding the fact that the surface ground granted by the said Rarus patent did not cover or extend over the said Rarus lode the defendants contends and claim that the said patent of the Rarus claim
84 granted to them and their predecessors in interest the said Rarus lode beyond the surface ground granted by the Rarus patent and to the full extent thereof of 1318 linear feet and also contend and claim that by reason of the ownership of the said lode for the length aforesaid, and that by reason of the fact that the same passes through the east end line of the Rarus claim, as patented and the west end line of the original location of the said claim, that they are entitled to follow said veins on their course or dip into the earth and without the line of the Rarus claim, both as originally located and as patented.

Your orator further shows that a large portion of the ground which it is claimed by the defendant was originally included within the location of the Rarus claim, has been patented under the said Johnstown patent, hereinbefore referred to and as shown by the portion shaded in yellow on the plat attached to the said Johnstown patent.

That notwithstanding that a portion of the Rarus location was patented under the Johnstown claim, the defendants contend and claim that only the surface ground of the Johnstown claim was patented to the patentees therein named and that all veins lying within the original location lines of the Rarus claim were patented to claimants under the Rarus claim and that defendants are entitled to claim the said veins extending through the Johnstown patent under and by virtue of the Rarus patent and that its extralateral right should be determined by the Rarus and not by the Johnstown patent.

Your orator further shows to your honors that it disputes each and every one of the claims made by defendants, relative to the construction of said several patents, and claims that all veins, whose
85 apexes lie within the Johnstown patent must be governed and regulated in extralateral rights, if any they have, under the Johnstown patent, and not under and by virtue of the Rarus patent.

And your orator further shows to your honors that the defendants claim that if they have no right to follow the veins within the lines of the original Rarus location, by virtue of the said Rarus patent, that they have a right to follow the same under and by virtue of

the Johnstown patent or the Johnstown patent and Rarus patent combined, under and beneath that portion of the Pennsylvania Lode claim belonging to this complainant; but opposed to this contention the complainant contends and insists that the defendants have no right to follow any vein, having its apex either within the Johnstown or Rarus patent, under any circumstances into or under the Pennsylvania Lode claim, at any point east of the intersection of the south side line of the Johnstown patent with the south side line of the original Rarus location.

And your orator further shows to your honors that the said defendants contend and claim that the complainant cannot under any circumstances obtain any relief for ores extracted within that portion of the premises owned by it, without first showing that the apices of the veins from which the ores were extracted, are within the surface lines of the ground owned and claimed by the complainant, whereas your orator claims that *prima facie that* it is the owner of all ores found within its boundary-s extended downward into the earth, until it has been shown that some other person or company has some right thereto by reason of ownership of the apex of the vein within some other claim.

And your orator further shows to your honors that it is claimed by the defendants that the apex of the veins from which the ores in question were extracted, is divided in that a portion thereof is claimed by the defendants as upon the Rarus Lode claim and a portion thereof upon the Johnstown Lode claim and a por-
86 tion thereof upon the Pennsylvania Lode claim. And defendants claim that by reason of the said divided apex that they may claim the right to follow the said vein beneath the surface and without the line of the Rarus and Johnstown claims, under and by virtue of either or both of the said claims, at their election.

Complainant alleges that if any such vein as is claimed by the defendants exists that they have no extralateral rights, by reason of the fact that the same has a divided apex.

Wherefore, your orator shows to your honors that there *is* involved in the matters in controversy, between your orator and the said defendants, the numerous questions aforesaid, involving the construction of the statutes of the United States, relative to locating, purchasing and patenting of mineral lands and the construction of the statutes, relative to the right of one claimant to follow veins down to and into the premises of another, under the circumstances and situation of the parties as hereinbefore set out, and also the construction of the said statutes in relation to patenting of claims and whether the vein can be patented to one person and the surface to another, and to the right of the Land Department to segregate the surface from the mineral in the ground, granting one to one person and the other to another, and as to whether said action is authorized under and by virtue of said statutes; and also as to whether when an apex of a vein is divided upon the surface, part being within the premises granted in one patent and a part within another, as to

what, if any extralateral rights, are granted under such circumstances to either party.

87 That said allegations in said answer of the Montana Ore Purchasing Company, to said amended bill of complaint are as follows: to wit:

That it admits that the complainant is a corporation organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Butte city, Silver Bow county in said State.

That this defendant is now and at all times mentioned in said complaint was a corporation duly organized and existing under and by virtue of the laws of the State of Montana, having its principal place of business at Butte city, Silver Bow county, in said State.

Admits that the complainant is the owner of the surface ground of that portion of the Pennsylvania Lode claim described in its complaint, but denies that the complainant is the owner of or entitled to the lode or veins or ore bodies upon which the defendants has entered and from which it has extracted the ores in question in this case, and alleges that defendant is the owner of said veins or lode and ore bodies. Admits that complainant acquired title to the Pennsylvania Lode claim by virtue of the several deeds of conveyance set out in its amended bill of complaint.

II.

Denies that on or about the first day of April, 1895, or at any other time or at all the defendant wrongfully or unlawfully entered upon or into the premises of the complainant, to wit, the Pennsylvania Lode claim as described by it, by underground workings, or tunnels, or shafts, or cross-cuts, or levels or otherwise or at all, or extracted from the said premises of complainant large or any quantities of valuable ores, or any ores to the amount of one hundred and fifty thousand (150,000) tons more or less, or to any amount whatever, or of the value of five hundred thousand dollars, ($500,000) more or less or of any value whatever.

88 And denies that ever since said time or at all defendant has continued to mine or extract ores from said premises belonging to the complainant or is now extracting ores therefrom or threatening so to do, or that it ever or at all mined or extracted ores from the said premises belonging to the complainant, or threatened so to do, as alleged in complainant's complaint or otherwise or at all, and denies that it will do so unless restrained by the injunction of this court.

Denies that complainant's ground is valuable for ores, as alleged in complainant's complaint and denies that it is these ores or any ores belonging to the complainant that defendant has extracted or is extracting or is threatening to extract therefrom.

Denies that the ground owned by the complainant is of the reasonable value of more than $100,000, and denies that the ores which the defendant is extracting or is threatening to extract are of the value in excess of $50,000 or that the same are of any value to the

complainant, or that complainant has any right, title or interest therein or thereto. Denies that the complainant has no means of ascertaining the quantity or value of the ores which the defendant is extracting or may extract from the said premises; and denies that if the defendant is permitted or allowed to continue to extract said ores that it would be uncertain and indefinite as to what amount of ores or the value thereof might be extracted in the future by the defendant; and denies that the complainant would be compelled to rely to a great extent or to any extent upon the good faith or showing of the defendant as to the amount or value of the ores which it has heretofore extracted, or may hereafter extract from said premises.

Denies that unless the defendant is enjoined or restrained from mining or extracting ores from said premises, that the
89 complainant will be required to bring numerous actions or any actions for the determination of the damages which it has sustained or will sustain by reason of the extraction of said ores by the defendant; and denies that complainant has sustained or will sustain any damages on account thereof. And denies that defendant is trespassing upon the premises of complainant or that any trespasses on the part of the defendant are continuing from time to time; and denies that defendant is intending to trespass upon the premises or rights of the complainant.

And defendant further denies that by reason of the trespasses upon its part on the premises of the complainant, complainant has suffered or will continue to suffer great or irreparable injury or damage, or will suffer any injury or damage at all on account of any act of the defendant; and denies that this defendant is trespassing upon the property of the complainant or threatening so to do.

III.

Defendant denies that the determination of the controversy between the complainant and defendant involves a construction of title 23, chapter 6, of the Revised Statutes of the United States, concerning mines and mineral lands in the manner stated in complainant's amended bill of complaint and denies that said controversy involves the construction of the same in any manner or at all, and denies that the controversy between the complainant and defendant involves the construction of any statute of the United States whatever.

Defendant admits that the Pennsylvania Lode claim claimed in part by complainant is a mining claim located under the provisions of the statutes of the United States relative to the appropriation of mineral lands and that the same has been patented as a mining claim.

90 Admits that the Rarus Lode claim and the Johnstown Lode claim are mineral claims located under the laws of the United States, relative to the appropriation and location of mineral lands and that the same have been patented under the laws of the United States.

Admits that the defendant owns a portion of that certain lode mining claim known as and called the Rarus Lode claim, lot No. 179, T. 3 N. R. 7 W. in Silver Bow county, Montana, and also a parcel of ground with all the veins, lodes and ledges having their top or apex therein with all their dips, spurs and angles, which parcel of ground lies within the lines of the Johnstown Lode claim lot No. 173, T. 3 N. R. 7 W. in Silver Bow county, Montana. And admits that said Rarus and Johnstown Lode claims lie north of and partly adjoining and near to the Pennsylvania Lode claim.

Denies that the defendant owns any portion of the Little Ida Lode mining claim, lot No. 126.

Defendant alleges that it is the owner of said parcel of ground as above admitted, within the Johnstown Lode claim and as hereinafter described and also that it is the owner of that portion of the Pennsylvania Lode claim hereinafter described. Defendant admits that it claims the right to enter upon the premises of complainant, to wit, that portion of the Pennsylvania Lode claim described in its amended bill of complaint, by reason of the fact that certain veins owned and claimed by the defendant, and in its possession have their top or apices within the Johnstown Lode claim, lot No. 173, and that portion thereof owned by the defendant and that the defendant asserts the right to follow such veins on their downward course or dip, although the same so far depart from a perpindicular as to depart from the said Johnstown Lode claim, and from that portion thereof owned by the defendant, and enter the premises owned and claimed by the complainant, to wit, that portion of the
91 Pennsylvania Lode claim, described in its amended bill of complaint. But defendant denies that it claims the right to enter upon the premises of the complainant, to wit, that portion of the Pennsylvania Lode claim described in its amended bill of complaint, by reason of the fact that any veins owned or claimed by defendant or in its possession have their top or apices within the Rarus Lode claim, or in that portion thereof owned by defendant, or by reason of the fact that the same have their top or apices within the Little Ida Lode claim or any portion thereof and denies that it asserts the right or any right to follow such veins on their downward course or dip, although the same so far depart from a perpendicular as to depart from said Rarus Lode claim, and to enter the premises claimed by the complainant; and denies that it asserts or claims the right to enter the premises of the complainant by reason of the fact that any veins owned or claimed by defendant have their top or apices within that portion of the Johnstown Lode claim owned by the defendant, and that it asserts the right to follow such veins on their downward coruse or dip although the same so far depart from a perpindicular as to depart from said Johnstown Lode claim, and from the portions thereof owned by defendant, and to enter the premises of complainant.

And defendant alleges that the vein or lode upon which it has mined within the lines of the Pennsylvania Lode claim and underneath the surface thereof has its top or apex within the Johnstown Lode claim and that portion thereof owned by the defendant. De-

fendant denies that said veins or lode upon which it has mined within the lines of the Pennsylvania Lode claim are not such veins or is not such a lode as can be followed on their or its course downward or dip beyond the lines of defendant's possessions, to wit, that portion of the Johnstown Lode claim owned by it, into the
92 ground or premises of complainant; and denies that said veins or lode are intersected or broken by faults in such manner that the same cannot be followed or traced from the ground of the defendant, to wit that portion of the Johnstown Lode claim owned by it into the Pennsylvania Lode claim, and denies that therefore, or for any other reason the defendant has not the right to enter upon the ground of complainant for the purpose of extracting ores from said vein or lode by reason of its ownership of the apex of the same within its ground the said portion of the Johnstown Lode claim.

Defendant alleges that the veins or lode upon which it has been mining within the Pennsylvania Lode claim and underneath the surface thereof have their top or apex within the lines of the Johnstown Lode claim as located and patented for the entire length of said claim, and running nearly parallel with the side lines thereof, and that the same pass on their or its strike through the end lines of the said Johnstown Lode claim as located and patented and that said end lines are parallel.

And defendant further alleges that the veins or lode upon which it has mined within the Pennsylvania Lode claim have their top or apex within that portion of the Johnstown Lode claim, owned by it, and that the same can be followed and have been followed continuously on or on the dip or downward course from the top or apex within the boundary lines of the Johnstown Lode claim, and the boundary lines of that portion thereof owned by defendant into the ground owned or claimed by complainant to wit, the Pennsylvania Lode claim. Defendant denies that the veins or lode from which it has been extracting ores within the premises of complainant do not on their or its course or strike depart from the end lines of defendant's claim, or possession and denies that the same de-
93 part from the side lines thereof in such a manner as to prohibit the defendant from following the same beyond the side lines of its own possessions, to wit, that portion of the Johnstown Lode claim, owned by it, into complainant's portion of the Pennsylvania Lode claim and denies that said veins or lode depart from the side lines of defendant's said possession or portion of the Johnstown Lode claim, in any manner or at all, and denies that they or it enter the Pennsylvania Lode claim in any other manner than upon the dip or downward course on a departure from the perpendicular through the side line of said Johnstown Lode claim, and of that portion thereof owned by the defendant.

Defendant admits that there are one or more veins or a lode which the defendant claims the right to follow on the dip beyond the side lines of the Johnstown Lode claim, and that portion thereof owned by the defendant, into the ground of the complainant, the Pennsylvania Lode claim; and denies that any of said veins or said

lode in their or its course or strike depart from the side lines of the said Johnstown Lode claim or the portion thereof owned by the defendant, but alleges the fact to be that the same on the course or strike depart from the end lines of the said Johnstown Lode claim as located and patented.

Defendant denies that said ground claimed by the defendand, to wit, that portion of the Johnstown Lode claim hereinafter described was not so located or situated as to have any end lines whatever; and denies that the said locator or locators of the ground owned by this defendant did mark the same with end lines not parallel, or did, locate the same across said vein or lode and denies that the said Johnstown Lode claim was not so located or situated as to have any end lines whatever, as provided by the statutes of the United States, in such cases; and denies that in consequence of the failure on the part of the locator or locators of the said Johnstown Lode
94 claim and the said portion thereof claimed by defendant to mark the same with end lines parallel, or to locate the same along the veins or vein or for any other reason the defendant has no extralateral rights in or to any of the veins in its said ground, to wit, the said portion of the Johnstown Lode claim or has not the right to follow the same into or upon the ground of the complainant. And defendant denies that the locator or locators of the said Johnstown Lode claim located the same across the veins or lode, but alleges that the same was located along the vein or lode, as required by the statutes of the United States, and that the same had and has parallel end lines through which the veins and lodes having their tops or apex therein pass on their course or strike.

Defendant admits that a patent was issued by the United States to Stanisla-s E. Hirbour, and others for that certain quartz lode mining claim, known as and called the Rarus; and also that a patent has been issued granted by the United States to William Harris Sr. and others for that certain quartz lode mining claim known as and called the Johnstown Lode claim (a copy of which patent is attached to complainant's amended bill of complaint).

And the defendant as showing to your honors that the questions involved in this case are not questions arising under the statutes of the United States, or involving the construction thereof, alleges that it does not claim to own a portion of the ground patented under both the Rarus and Johnstown patents, or that it claims in this action that by virtue of said Rarus patent it has acquired 1318 linear feet of what is designated or called the Rarus lode; and denies that it is contended in this action by the defendant that under and by virtue of said Rarus patent it or its predecessors in interest were granted 1318 linear feet to the Rarus lode extending from
95 what is known as the east end line of the Rarus claim to an imaginary of projected line of the Rarus location.

Defendant alleges that it claims to own and does own whatever rights were granted under the patent for the Rarus Lode claim issued by the United States, but that it does not assert any title in this action under said patent, as against the complainant, but relies

upon its ownership of that portion of the Johnstown and Pennsylvania Lode claims hereinafter described.

Defendant admits that the surface ground granted to the predecessors in interest of the defendant in the Rarus Lode claim is as shown by the yellow shading on the map attached to the Rarus patent, but defendant denies that it contends in this action or claims that the patent for the Rarus Lode claim granted to it or its predecessors in interest the Rarus lode beyond the surface ground granted by the Rarus patent or to the full extent thereof of 1318 linear feet and denies that it contends or claims in this action that by reason of the ownership of said lode for the length aforesaid, or by reason of the fact that the same passes through the east end line of the original location of the said claim, that it is entitled to follow said veins on their course or dip into the earth without the lines of the Rarus Lode claim, either as originally located or as patented.

And defendant alleges that in this action it makes no claim of any right under the Rarus patent to enter upon the veins within the ground claimed or owned by the complainant but that it asserts its right to do so by reason of its ownership of a portion of the Johnstown Lode claim, and the fact that the top or apices of the veins or lode in question are within said portion of the Johnstown Lode claim.

Defendant admits that a large portion of the ground which was originally included within the location of the Rarus claim
96 has been patented under the said Johnstown patent and defendant denies that in this action it contends or claims that only the surface ground of the Johnstown claim was patented to the patentees named therein or that all or any veins lying within the original location lines of the Rarus claim were patented to the claimant under the Rarus claim; and denies that it claims or contends that it is entitled to claim the veins extending through the Johnstown patent under or by virtue of the Rarus patent, or that its extralateral rights should be determined by the Rarus patent, and not by the Johnstown patent, but defendant alleges that it contends and claims in this action and in so far as this controversy between complainant and defendant is concerned that its extralateral rights to the veins in question should be determined by its ownership of that parcel of ground now included within the Johnstown claim, and not by the Rarus, for the reason that said vein- or lode- have their top or apex within the said parcel of ground owned by the defendant.

Defendant denies that it makes any claim in this action that if it has no right to follow the veins within the lines of the original Rarus location by virtue of said Rarus patent, that it has a right to follow the same under and by virtue of the Johnstown patent, or of the Johnstown and Rarus patents combined, under and beneath that portion of the Pennsylvania Lode claim belonging to the complainant; and defendant asserts that it does not rely upon any combination of the Johnstown and Rarus patents in this action, but relies upon its ownership of said parcel of ground conveyed to its

predecessors by the owners of the Johnstown claim, and the Johnstown patent.

Defendant denies that it contends or claims that the complainant cannot under any circumstances obtain any relief for the ores extracted within that part of the premises owned by complainant, without first showing that the apex of the vein or veins from
97 which the ores were extracted are within the surface lines of the ground owned and claimed by the complainant. And defendant alleges that its only contention upon this point in the case is that *that* the complainant cannot recover for any of the ores extracted by defendant from within that portion of the premises owned by complainant, for the reason that the top or apex of the vein or lode from which the ores have been extracted is within that parcel of ground owned by defendant, and lying within the lines of the Johnstown claim, and that it is the owner thereof by virtue of said deed of conveyance; and further that the same depart on the strike through the end lines of the Johnstown Lode claim and that the same are therefore outside of the ground owned or claimed by the defendant and that defendant is therefore the owner of the vein or veins or lode throughout the entire depth of the same to the extent that the apex or top of the same is within the ground owned by defendant, and outside of the ground owned and claimed by the complainant.

And defendant denies that it is claimed by it that the apex of the veins from which the ores in question were extracted is divided in that the defendant claims that a portion thereof is upon the Rarus Lode claim and a portion thereof is upon Johnstown Lode claim, and a portion thereof upon the Pennsylvania Lode claim, and defendant denies that the apex of the vein or lode is divided at all or that it claims or asserts in this action that the same is divided; but defendant avers that it claims that the vein or veins or lode from which the ore in question has been extracted have or has their or its apex within the Johnstown Lode claim, and that the same passes through the end lines thereof and defendant alleges that the apex of the same is within that portion thereof owned by it.

And defendant alleges that it does not claim that by reason of a divided apex it may claim the right to follow the said vein or veins or lode beneath the surface and without the lines of the Rarus
98 or Johnstown Lode claims under or by virtue of either or both of said claims at its election, or otherwise, and defendant does not claim that by reason of a divided apex of the vein or veins or lode in question that it has a right to follow the same beneath the surface and without the lines of the Johnstown claim.

And defendant states that if there is any vein having its top or apex within the Johnstown Lode claim or that portion thereof owned by defendant and which departs on its strike from the Johnstown Lode claim in such manner as to have a divided apex, that is to say a portion of the apex within the Johnstown Lode claim and a portion outside thereof and on the Rarus and Pennsylvania claims that it does not claim the right to follow the same beneath the surface and without the lines of the Johnstown claim, under and by virtue

of either or both of the Rarus or Johnston claims, or at all, and that it does not claim the right to follow the same under the Johnstown claim or patent therefor downward at any point beyond where the entire apex of the vein or lode is within the Johnstown claim, and that portion thereof owned by defendant. And defendant therefore shows to your honors that there is not involved in the matters in controversy between the complainant and defendant any questions involving the construction of the statutes of the United States, relative to locating, purchasing or patenting mineral lands, or any other statutes of the United States, or any construction of such statutes relative to the right of one claimant to follow veins down to and into the premises of another, or any construction of said statutes in relation to the patenting of claims, or whether the vein can be patented to one person and the surface to another or the right of the land office to segregate the surface from the mineral in the ground, or the right to grant one to one person and the other to another or as to whether said action is authorized under or by virtue of the statutes, or as to whether when the apex of a vein is divided
99 upon the surface part being within the premises granted in one patent and a part within another, what, if any, extra-lateral rights are granted under such circumstances to either party.

As there is no controversy between the complainant and defendant in this action upon any of the matters or things suggested or stated by the complainant in its amended bill of complaint, for the purpose of showing that this court has jurisdiction, defendant therefore asserts that this court has no jurisdiction of the subject-matter of this action or the controversies between the complainant and defendant herein."

The court further certifies that upon the said amended bill of complaint and the said answer thereto, this court sustained said application to dismiss and entered a decree of dismissal in accordance therewith, holding that a Federal question was not presented by said allegations and that in consequence thereof there was no juri-diction in this court in said action.

The court further certifies that the amount involved in said controversy as shown by said amended bill of complaint was in excess of two thousand dollars, exclusive of interest and costs.

Done this 30 day of March, 1899.

HIRAM KNOWLES,
*Judge of said Court.*

Endorsed: (Title of court and cause.) Certificate of question of jurisdiction on appeal. Filed March 30, 1899. Geo. W. Sproule, clerk by Chas. W. Blair, dep. clerk.

100 And thereafter to wit, on the 16th day of March 1901, complainant files its assignment of errors herein in the words and figures as follows, to wit:

101 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER Mining Company, Complainant,
*vs.*
MONTANA ORE PURCHASING COMPANY, F. AUGUSTUS HEINZE, and Arthur P. Heinze, Defendants.

*Assignment of Errors.*

Comes now the complainant in the above-entitled cause and assigns errors in the decision and decree of the circuit court in the above-entitled cause, as follows:

I.

In dismissing the said action and entering the final decree in favor of the defendants for its costs against the complainant the court erred.

II.

The court erred in holding that it had no jurisdiction of the subject-matter and parties in the above-entitled action and in dismissing the complainant's amended bill upon motion of the defendants.

In order that the foregoing assignment of errors may be and appear of record, the complainant presents the same to the court and prays that such disposition be made thereof as in accordance with the law and statutes of the United States in such cases made and provided, and the complainant prays a reversal of the decretal order and decree of dismissal made and entered by said court.

JOHN F. FORBIS AND
L. O. EVANS,
*Of Butte, Montana, Solicitors for Complainant.*

Service of the foregoing by copy is hereby acknowledged
102 this 15th day of March, 1901.

McHATTON AND COTTER,
*Solicitors and of Counsel for Defendant.*

Endorsed: (Title of court and cause.) Assignment of errors. Filed and entered March 16th, 1901. Geo. W. Sproule, clerk.

And thereafter, to wit, on the 16th day of March, 1901, the complainant filed its petition on appeal herein which is in the words and figures as follows, to wit:

103 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER Mining Company, Complainant,
*vs.*
MONTANA ORE PURCHASING COMPANY, F. AUGUSTUS Heinze, and Arthur P. Heinze, Defendants.
} No. 35.

*Petition on Appeal.*

To the Honorable Hiram Knowles, district judge and one of the judges of the above-named court, presiding therein:

The above-named complainant, in the above-entitled cause, Boston and Montana Consolidated Copper and Silver Mining Company, conceiving itself aggrieved by the order and decree made and entered by the above-named court in the above-entitled cause, under date of March 29, 1899, wherein and whereby among other things, it was and is ordered and decreed that this action be dismissed for the reason that the court has no jurisdiction of the subject-matter or the parties to this action and that the defendant- have and recover of the complainant *its* costs of suit, and do hereby appeal to the Supreme Court of the United States from said decree, and plaintiff prays that this its petition for its said appeal may be allowed and that the transcript of record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 15th day of March 1901.

JOHN F. FORBIS &
L. O. EVANS.
*Of Butte, Montana, Solicitors for Boston and Montana Consolidated Copper and Silver Mining Company, Complainant.*

104 Service of the foregoing by copy is hereby acknowledged this 15th day of March, 1901.

McHATTON AND COTTER,
*Solicitors and of Counsel for Defendants.*

Endorsed: (Title of court and cause.) Petition on appeal. Filed and entered March 16, 1901, Geo. W. Sproule, clerk.

And thereafter, to wit, on the 16th day of March 1901 an order allowing appeal herein was duly made and entered in the words and figures as follows, to wit:

105 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER Mining Company, Complainant,
*vs.*
MONTANA ORE PURCHASING COMPANY, F. AUGUSTUS Heinze, and Arthur P. Heinze, Defendants.
No. 35.

*Order Allowing Appeal.*

At a stated term, to wit, the February term, A. D. 1901, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of Montana, held at the court-room in the city of Butte, county of Silver Bow, on the 16th day of March, 1901.

Present: Honorable Hiram Knowles, United States district judge.

On motion of Forbis and Evans, solicitors and of counsel for the complainant, it is ordered that an appeal to the Supreme Court of the United States from the final decree heretofore filed and entered herein, be and the same is hereby allowed, and that the certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein, be forthwith transmitted to the Supreme Court of the United States. It is further ordered that the bond on appeal be fixed at the sum of five hundred dollars, as a bond for costs and damages on appeal.

Dated the 16th day of March, 1901.

HIRAM KNOWLES,
*District Judge.*

Endorsed: (Title of court and cause.) Order allowing appeal. Filed and entered March 16, 1901. Geo. W. Sproule, clerk.

106 And thereafter, to wit, on the 16th day of March 1901, a bond on appeal was duly approved and filed herein which is in the words and figures as follows, to wit:

107 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER Mining Company, Complainant,
*vs*
MONTANA ORE PURCHASING COMPANY, F. AUGUSTUS HEINZE, and Arthur P. Heinze, Defendants.
No. 35.

*Bond.*

Know all men by these presents: that we, the Boston and Montana Consolidated Copper and Silver Mining Company, a corporation, as principal, and Alex J. Johnston and J. K. Heslet as sureties,

are held and firmly bound unto the Montana Ore Purchasing Company, F. Augustus Heinze and Arthur P. Heinze, in the full and just sum of five hundred dollars, to be paid to the said Montana Ore Purchasing Company, F. Augustus Heinze and Arthur P. Heinze their attorneys, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this 15th day of March in the year of our Lord one thousand nine hundred and one.

Whereas, lately at a session of the circuit court of the United States, for the ninth circuit, district of Montana in a suit pending in said court, between the said Boston and Montana Consolidated Copper and Silver Mining Company, complainant and The Montana Ore Purchasing Company, F. Augustus Heinze and Arthur P. Heinze respondents, a decree was rendered against the said Boston and Montana Consolidated Copper and Silver Mining Com-
108 pany, and the said company having obtained from said court an order allowing an appeal to the Supreme Court of the United States, to reverse the decree of the aforesaid suit, and a citation directed to the said Montana Ore Purchasing Company, F. Augustus Heinze and Arthur P. Heinze is about to be issued citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at the city of Washington.

Now the condition of the above obligation is such that if the said Boston and Montana Consolidated Copper and Silver Mining Company, shall prosecute its said appeal to effect, and shall answer all damages and costs that may be awarded against it, if it fail to make its plea good, then the above obligation to be void; otherwise to be in full force and effect.

ALEX J. JOHNSTON.
J. K. HESLET.

Sufficiency of sureties on the foregoing bond approved this 16th day of March 1901.

HIRAM KNOWLES, *Judge.*

Bond on appeal. Filed and entered Mar. 16, 1901. Geo. W. Sproule, clerk.

And thereafter, to wit, on the 16th day of March 1901 a citation was duly issued, served and filed herein which is hereto annexed and is as follows.

109 *Citation.*

The President of the United States to the Montana Ore Purchasing Company, F. Augustus Heinze and Arthur P. Heinze, and John J. McHatton, their attorney, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, within sixty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the circuit court of the United States, for the district of Montana, wherein The Boston and Montana Consolidated Copper and Silver Mining Company is the plaintiff, and you are the defendants in error, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done the parties in that behalf.

Witness the Honorable Hiram Knowles, judge of the district court of the United States of America, district of Montana, this 16 day of March, A. D. 1901, and of the Independence of the United States the one hundred and twenty-fifth.

HIRAM KNOWLES,
*United States District Judge, Presiding in the Circuit Court.*

Attest:

{Seal United States Circuit Court, District of Montana, Southern Division, 1892.}

GEO. W. SPROULE, *Clerk.*

Due service of the foregoing citation on appeal, admitted by copy at Butte, Montana, this 16 day of March, 1901.

McHATTON & COTTER,
*Attorney- for Defendants.*

110 [Endorsed:] 35. In U. S. court. B. & M. Con. C. & S. M. Co. *v.* Mont. O. P. Co. *et al.* Citation. Filed and entered Mar. 18 1901 Geo. W. Sproule, clerk. By T. B. Stephens, deputy clerk.

111 UNITED STATES OF AMERICA, } *ss:*
*District of Montana,* }

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

I, George W. Sproule, clerk of the United States circuit court for the district of Montana, do hereby certify and return to the honorable the Supreme Court of the United States, that the foregoing volume, consisting of 111 pages, numbered consecutively from 1 to 111 inclusive, is a true and correct transcript of the pleadings, certificate of question of jurisdiction orders, exhibits and other pro-

ceedings had in said cause and of the whole thereof, as appears from the original records and files of said court in my possession; and I further certify and return that I have annexed to said transcript and included within said paging the original citation.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Helena, in the district of Montana, this 6th day of May, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the 125th.

[Seal United States Circuit Court, District of Montana, 1890.]

GEO. W. SPROULE, *Clerk.*

Endorsed on cover: File No. 18,175. Montana C. C. U. S. Term No. 329. The Boston and Montana Consolidated Copper and Silver Mining Company, appellant, *vs.* The Montana Ore Purchasing Company, F. Augustus Heinze and Arthur P. Heinze. Filed May 21, 1901.